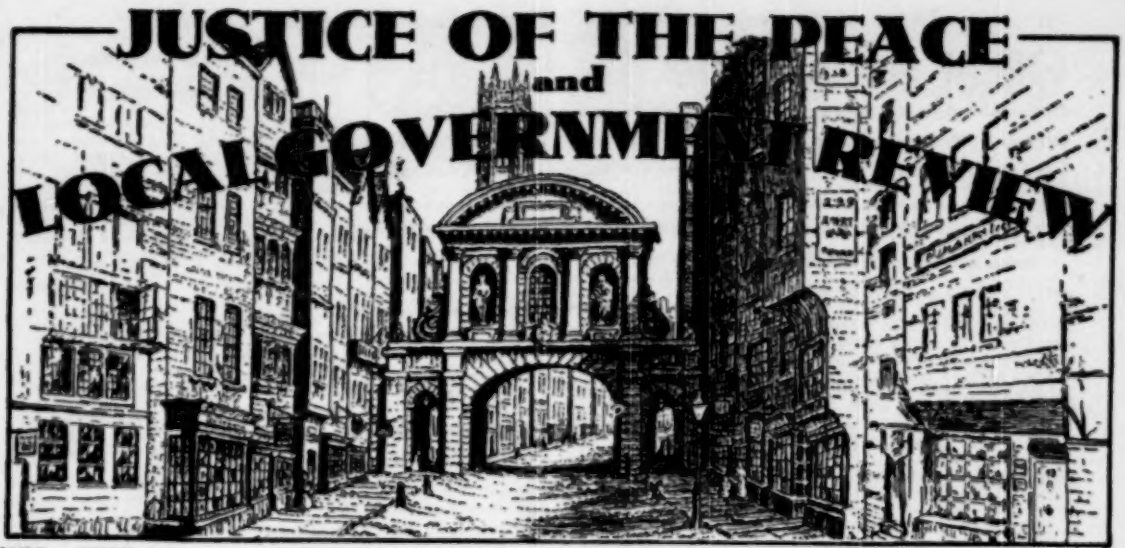

VOL. CXIV. LONDON: SATURDAY, SEPTEMBER 23, 1950. No. 38

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REPORTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

County Borough of West Ham

Appointment of Assistant Solicitor

APPLICATIONS are invited for appointment of Assistant Solicitor. Salary A.P.T. VI/VII, £595 to £710 (plus London Weighting, £20-£30 according to age)—with commencing salary according to experience. Experience in town planning work an advantage.

Applications with two testimonials by October 5, to me from whom conditions of appointment may be obtained.

G. E. SMITH,
Town Clerk.

West Ham Town Hall,
Stratford, E.15.

Eastern Electricity Board

Law Clerk

APPLICATIONS are invited from law clerks, with some experience in conveyancing, for an appointment in the Secretary's Office.

The salary scale will be £450 × £20 to £510 per annum. The commencing salary within the scale will be fixed according to experience. The conditions of service will be in accordance with the conditions laid down from time to time by the appropriate negotiating body.

The successful candidate will be required to contribute to a superannuation scheme, and may be required to pass a medical examination.

Applications, stating full details of age, education, experience and present position and salary, should be sent to the Secretary, Eastern Electricity Board, Wherstead, Ipswich, so as to be received not later than Saturday, October 7, 1950.

September 15, 1950.

County Borough of Wolverhampton

Appointment of Law Clerk

APPLICATIONS are invited for the appointment of Law Clerk in my department. Salary Grade A.P.T. IV (£480—£525 p.a.). The appointment will be subject to the Conditions of Service of the National Joint Council for Local Authorities Administrative, etc., Services, to the provisions of the Local Government Superannuation Act, 1937, and to passing a medical examination, and will be determinable by one month's notice on either side.

The person appointed will be engaged mainly on conveyancing and drafting of agreements. Experience of the operation of the Small Dwellings Acquisition Acts would be an advantage.

Applications, together with the names of two referees, should reach me not later than Saturday, September 30, 1950.

Canvassing, directly or indirectly, will be a disqualification.

J. BROCK ALLON,
Town Clerk.

Town Hall,
Wolverhampton.

County Borough of Dudley

ASSISTANT SOLICITOR required in the Town Clerk's Office at a salary in accordance with Grade A.P.T. V (*a*) (£550-£610 per annum). Applications, together with copies of three recent testimonials, must reach the Town Clerk, Dudley, not later than Monday, October 16, 1950.

Essex Probation Area

Appointment of Female Probation Officer

APPLICATIONS are invited for the appointment of a full-time female probation officer.

Applicants must not be less than 23, nor more than 40 years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949, and the salary will be according to the scale prescribed by those rules.

Applicants should be able to drive a car.

The successful applicant will be required to pass a medical examination.

Applicants, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned not later than two weeks after the appearance of this advertisement.

W. J. PIPER,
Deputy Clerk of the Peace and of the Probation Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.
September 1, 1950.

Borough of Slough

Appointment of Assistant Soliciter

APPLICATIONS are invited for the appointment of Assistant Solicitor, at a salary in accordance with the National Scheme of Conditions of Service, namely (*a*) after admission and on first appointment—A.P.T. Division Grade Va (£550—£610 per annum); (*b*) after two years' legal experience from the date of admission—A.P.T. Division Grade VII (£635—£710 per annum). The appointment will be subject to one month's notice and to the National Conditions of Service. The Local Government Superannuation Act, 1937, will apply and the selected applicant will be required to pass a medical examination before appointment.

Applications, endorsed "Assistant Solicitor," stating age, qualifications and experience, together with the names and addresses of two persons to whom reference may be made, must reach the undersigned not later than September 29, 1950.

Canvassing, or failure to disclose any known relationship to a member or senior officer of the Council will disqualify.

NORMAN T. BERRY,
Town Clerk.

Town Hall,
Slough.
September 15, 1950.

Borough of Shrewsbury

Deputy Town Clerk

APPLICATIONS are invited from admitted solicitors with good local government experience for the position of Deputy Town Clerk, Shrewsbury. Salary Grade A.P.T. IX (£750 × £50—£900).

Application forms may be obtained from the undersigned to whom they should be returned completed (with copies of two recent testimonials) not later than October 5, 1950.

S. H. R. LOXTON,
Town Clerk.

Guildhall,
Shrewsbury.

County of Somerset

Appointment of Male Probation Officer

THE PROBATION COMMITTEE for the Somerset Combined Area invite applications for the appointment of a whole-time male probation officer. The appointment will be subject to the Probation Rules and salary will be paid in accordance with these rules, together with a travelling allowance. The salary will be subject to superannuation deduction, and the selected candidate will be required to pass a medical examination. Applicants must be not less than 23 and not more than 40 years of age, unless the applicant is at present serving as a full-time probation officer.

Applications, stating age, qualifications and experience should be addressed to reach the undersigned not later than October 11, 1950.

Testimonials are not at present required but candidates should give the names of three referees to whom inquiries can be addressed.

Canvassing, either directly or indirectly, will be a disqualification.

HAROLD KING,
Clerk of the Peace.

County Hall,
Taunton.

City of Nottingham

Town Clerk's Office

Common Law Clerk

I DESIRE to appoint a person with the necessary qualifications and experience as the Common Law Clerk in my office.

The person appointed must be experienced in all the aspects of common law work which is normally undertaken in a solicitor's office and must be able to deal with matters without detailed supervision.

The salary will be within the range £520-£535-£550-£570 and will commence at the stage as is considered suitable having regard to the experience of the person appointed. There are prospects of promotion to a higher grade and I am prepared to consider an appointment at a higher salary than the above range in a suitable case.

The person appointed will be included in the Corporation's superannuation scheme and for this purpose will have to pass a medical examination before appointment.

Applications must include the names of two persons to whom reference can be made and should be received by me at this office not later than the last post on October 9, 1950.

J. E. RICHARDS,
Town Clerk.

The Guildhall,
Nottingham.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

Explanation by Adoption Societies to Parents

The Adoption Societies Regulations, 1943, made under the Adoption of Children (Regulation) Act, 1939, s. 4, provide in sch. 2 a form of memorandum to be given by a registered adoption society to every parent or guardian who proposes to place a child at the disposition of the society. As from September 20, 1950, this sch. 2 is replaced by a new one set out in the Adoption Societies Regulations, 1950 (S.I. 1950 No. 1368). This new sch. 2 contains a much fuller explanatory memorandum explaining clearly the position of parents and guardians who seek to hand over a child to an adoption society. Certain changes in the memorandum were necessary, of course, because of changes in in the law, but quite apart from that we think that the memorandum is a considerable improvement upon the old one.

The Public and the Law

It is very hard for the average citizen to ascertain clearly the details of many of the modern statutory provisions that affect him, and much has been done, particularly by Citizens' Advice Bureaux and Poor Men's Lawyers, to help him to find out what he wants to know. We have received from Mr. P. B. Dingle, the Town Clerk of the City of Manchester, copies of each of four pamphlets which he has had prepared which give very useful information to foster parents, and to those interested in applications for adoption orders, and to any who want to know how and when children's names can properly be changed. Foster parents are informed as to their duties and responsibilities under separate headings, and the pamphlet is expressed in simple language which all should be able to understand. Those who are in doubt on any point are advised to apply to the Children's Officer, whose full address is given. There are two pamphlets dealing with adoption. The first is concerned with the Adoption Act, 1950 (which comes into force on October 1, next), and calls attention to certain sections which require or prohibit the doing of certain things in connexion with the adoption of children such as the restriction on advertisements, the prohibition of payments except with the courts' approval, the duty to give certain information to the Corporation or the welfare authority, and so on. As in the case of foster parents, application for further information is invited to be made to the Children's Officer. The other adoption pamphlet is addressed to those who have adopted children and tells them about shortened birth certificates, about the advisibility of making a will, and so on. The notes on the alteration of children's names deal with alterations to be made in the register of births after registration (where no question of adoption is involved) and with changes of name on adoption, on confirmation and by deed poll.

We have no doubt that similar pamphlets are available in many other places throughout the country. We refer to these particular ones because they happen to have been brought to our notice and because we welcome all attempts to help people to understand their rights and obligations in this modern and very complex world.

Remand for Report

The provisions of s. 26 of the Criminal Justice Act, 1948, are by now well known, and we believe they have been found most useful. There is one point about which there has been some discussion. Before acting under this section, the court must be satisfied that the accused committed the offence. It is to be noticed that it is not said that the defendant must have been convicted, nor is the language similar to that of s. 24, where the court needs only to be satisfied that the defendant did the act or made the omission charged.

Section 25 definitely deals with remands after conviction while s. 24 refers to a class of case in which the defendant may not be convicted after all. The court may decide that by reason of mental unsoundness he is not guilty of the offence, although guilty of an act or omission for which he would be held liable but for his mental condition. The position may be compared with that in which a person is tried by jury and found guilty but insane. The summary court makes an order having the effect of handing him over to the authorities for mental treatment.

Cases falling under s. 26 are those in which the court has satisfied itself that the case for conviction has been made out, but in which the court has reason to think that a medical examination and report are desirable. The words of the section seem to have been carefully designed to leave the way open for the court to abstain from conviction if the result of the examination is to show that although the accused has been considered liable to conviction the court might still decide not to convict, but to deal with the case under s. 24 or under s. 8 of the Mental Deficiency Act.

The wording has sometimes been criticized as not being the most apt for the purpose in view ; but at all events the intention appears clear enough, and it should not prove difficult to give effect to it, and that is what matters most.

Dividing the Home

Justices have no power, in dealing with the unfortunate domestic problems which occupy so much of many courts' time, to make orders about the division of furniture and other property in a home, but they are often asked by parties what their rights in the matter are, and who is entitled to this or to that article. It may help justices in giving such advice if we quote from the judgment of Denning, L.J., in *Newgrosh* v. *Newgrosh* (1950) 210 L.T. 108: "In the ordinary running of a home when the parties agree to buy clothes or furniture they may also agree to whom it is to belong; but if, as so often happens, they leave that unsaid, the title to it depends as a rule on the nature of the property bought or the investment made. It does not necessarily depend on who provided the money. If clothes are bought for the wife they are, of course, hers. If money is invested in the wife's name it is presumably hers. Conversely, when money is invested in the husband's name it is presumably his. If, however, the parties invest money in their joint names, or if they buy furniture with it which is obviously intended as a continuing provision for the benefit of them together it may properly be presumed to belong to them jointly . . . Full effect is, therefore, given to their intention by holding them to be the joint owners."

News from Northern Ireland

Newspaper reports from Northern Ireland about two cases heard before resident magistrates there give cause for comment. In the first a doctor, who stated subsequently that he had been called in by the police to examine a man who was alleged to be unfit because of alcohol to have proper control of a motor vehicle, sent his bill for the examination to the man whom he examined. There was argument in court as to the admissibility of his evidence on the ground that a doctor should not disclose confidential information about a patient without his consent. The doctor said that the man was not his patient. The case was eventually dismissed on its merits, the magistrates saying that, on the doctor's evidence, it was a borderline case. During the course of an adjournment of the case the doctor concerned consulted the British Medical Association on the question of medical etiquette. There is in fact no privilege so far as medical men are concerned, and they may be compelled to disclose communications made to them in professional confidence (*see Stephen's Digest of the Law of Evidence* 12th edn., p. 151). The case cited is *Duchess of Kingston's case* (1776) 20 S.T. s. 72-573.

The other case is one in which certain persons were convicted under the Lotteries Act, 1823, s. 41 (this Act was repealed, except as to Northern Ireland, by the Betting and Lotteries Act, 1934), in what was described as a test case to decide the legality or otherwise of certain "pools." What has attracted our attention is a report in a newspaper that "in this instance heavy penalties were not asked for, but there are likely to be demanded in the event of further prosecutions being necessary." We should be very surprised to learn that in Northern Ireland, any more than here, the prosecution *demands* any particular penalty. They can, of course, put a case before the court as being a grave one, an ordinary one, or a trivial one but it is always for the court to decide on the penalty. It is not stated, in the report in question, on what authority this particular statement is made.

Co-ordinate Inconsistency

We called our readers' attention at 113 J.P.N. 140 to the contrast between the decision in *Jackson Stansfield and Sons* v. *Butterworth* [1948] 2 All E.R. 558; 112 J.P. 377, where the Court of Appeal held that a civil building licence under Defence Regulation 56A must be in writing, a "physical object," in the words of Asquith, L.J., and that in *Falmouth Boat Construction, Ltd.* v. *Howell* [1950] 1 All E.R. 528, where the Court of Appeal held that a ship repairing licence under Defence Regulation 55 could effectively be given orally. The Court of Appeal cannot, in modern judicial doctrine, reconsider and depart from a decision of its own, and it has therefore been thought necessary to invent all sorts of fine distinctions, in an effort to reconcile the two decisions. Each decision by itself can be supported upon grounds of common sense. Ships may have to be very urgently repaired; building work has to be paid for, and therefore, since it is elementary law that a person cannot establish a claim to be paid for doing something illegal, there must be a proper document to show that the work was legally carried out. But common sense can just as well be put the other way: building work may be urgently needed to protect human life from danger, and a person who is asked to pay for ship repairs is just as much entitled as is a building owner, or an insurance company called upon to pay for building work, to know whether the work done was legal. The subtleties of the Court in the ship-repairing case, where the full report (not available when our earlier Note was written) shows a gallant attempt to distinguish the decisions, are, we fear, unconvincing. Since neither the legislature nor the House of Lords has found an opportunity to put one of the decisions out of action, the best that can be said is that, while civil building licences are unhappily still with us, cases upon ship repairing are perhaps unlikely to occur again.

The Law Quarterly

The *Law Quarterly Review* for July, 1950, is strong on the historical side. Professor H. G. Hanbury has a thirty page article on "Blackstone in Retrospect," which is a mine of information, and should go some way to rehabilitate Blackstone in face of the criticism directed against him for a generation past. Dr. Farnsworth has an article on "Addington, Author of the Modern Income Tax," which throws unfamiliar light both upon the character and capacity of a prime minister of whom historians in general have had no high opinion, and upon the origin of the income tax, which popular historians have commonly ascribed to Addington's predecessor Pitt. It is true that the first specific income tax was carried through Parliament by Pitt, but Dr. Farnsworth shows that this was a poor thing, incapable of long survival, whereas the scheme carried through by Addington on the advice, apparently, of Vansittart, Secretary of the Treasury from 1801 to 1804, has remained substantially as the basis of the structure until the present day.

We suppose it is entirely coincidence, but it is curious how this issue of the *Law Quarterly* is paralleled by papers in the corresponding issue of the *Modern Law Review*. Professor Goodhart, editor of the *Law Quarterly*, has a fifteen page paper under the clumsy title "The 'I think' Doctrine of Precedent: Invitors and Licensors." In the *Modern Law Review* Mr. E. Hall-Williams has a paper on "*Res Judicata* in Recent Cases." The latter is not concerned especially with invitors and licensors, but there is similar criticism of the following of precedents in these parallel papers. Again, the "Disciplinary Powers of Professional Bodies" in the *Modern Law Review*, to which we have already called attention, is paralleled in the *Law Quarterly* by a review over the signature of Sir Cecil Carr, of three books, the first and last of which we have ourselves already noticed, namely Dr. Sieghart's *Government by Decree*, Lord Justice Denning's *Freedom under the Law*, and Mr. R. S. W. Pollard's *Administrative Tribunals at Work*. Although Sir Cecil Carr covers more ground in less space than Mr. Hall-Williams, and is dealing with a wider group of topics, yet the unequalled knowledge of such matters, which he has acquired as counsel to the Speaker, lends to this book review the authority of a contribution in its own right.

As always, the notes which take up the first thirty pages or so of the *Law Quarterly* contain a quantity of miscellaneous information, upon important legal topics of current interest, many of which, such as rent restriction and certain points arising in divorce proceedings, are of particular interest to our own readers. Among them is a note which may be important for practitioners advising in commercial matters where one of the parties is a citizen of the Republic of Ireland, upon the relation between English decisions before the setting up of the Republic and the law as now administered by the Supreme Court in Dublin. One feature, superficially strange but quite logical, is that decisions of the House of Lords, pronounced before the setting up of the Irish Free State, have the same force in the present Republic of Ireland as in England, Scotland, or Northern Ireland. That is to say, it declares the law as it then stood, and is binding on all courts except in so far as affected by later Irish legislation.

Linguistics Again

At p. 279 in this same part of the *Review* is a note over Mr. R. E. Megarry's initials which, if the *Review* used cross-headings like those of our Notes of the Week, might have been entitled "Any Stick to Beat a Dog." He shows Wynn-Parry, J., indulging in the once favourite judicial pastime of flogging Parliament, or the parliamentary draftsmen, for linguistic faults—but using a bent if not a broken cane. The object of his lordship's censure was the phrase "reasonably necessary," in the Iron and Steel Act, 1949, which he declared to have no meaning in English or in logic. Mr. Megarry is able to show not only that the phrase, which in truth is common enough in ordinary speech, has stood in various places on the statute book for the better part of a century, but that a few days earlier it had been used (deliberately and with no statutory reason for its use) by Lord Justice Jenkins, when delivering the leading judgment in *Jones* v. *Herxheimer* [1950] 1 All E.R. 323. We are (with due respect, of course), tempted to parody Bret Harte's parody of Whittier: "And what in Judge Jenkins was native grace, Wynn-Parry, J., held was out of place." Mr. Megarry's "awe and affection" for the parliamentary counsel has been put on record in the dedication to successive editions of his book on the Rent Restrictions Acts. His note in the *Law Quarterly Review* will not increase the affection felt upon the bench for that corner of the bar, but shows its denizens to be a little more awesome than Wynn-Parry, J., had thought.

Retrospective Legislation

Lastly, this number of the *Law Quarterly Review* contains an initialled note upon retrospective legislation, and the proper limits of the recognized legal objections to it, which seems calculated—if political controversialists ever read the *Law Quarterly*—to pour cold water upon some of the hot arguments which blew up around the Budget of this year. The learned author of the note draws a firm distinction between retroactive legislation in the criminal sphere, which in general (see below for the purpose of this qualification) is recognized by all legal philosophers to be indefensible, and legislation imposing taxes in the present upon the proceeds of actions performed in the past, not only lawfully but in the expectation of producing untaxed profit. The objection to the latter type of legislation is political; this is not to say that the objection is not strong, and normally valid in its own sphere, but merely that it is an objection differing in kind from the objection to imposing punishment in future upon a past act which was not unlawful when performed. During the Budget controversy some play was made with a quotation from the Constitution of the United States, which in s. 9 of art. I provides that "no bill of attainder or *ex post facto* law shall be passed" by Congress. The note in the *Law Quarterly* shows that this provision does not preclude the passing of retroactive taxing statutes; Bouvier's *Law Dictionary* cites more than twenty cases where the courts have so held, and in *Kentucky Union Co.* v. *State of Kentucky*, 219 U.S. 140, the Supreme Court of the United States laid it down that the section above quoted "has reference to criminal punishment only," and that retroactive statutes "imposing taxes or providing for their assessment and collection" are not forbidden by the Constitution. We said above that legal philosophy had "in general" been hostile to *ex post facto* criminal punishment. We inserted the qualification because, first, our own courts have held quite recently that legislation (that is, subordinate legislation open to judicial review) could impose an increased penalty upon the conviction after the enactment of a person who before the enactment had been guilty of an act which was already a punishable offence. He cannot claim a vested interest in the smallness of the penalty imposed under the enactments which were in force at the time when he performed the act, if that act was already illegal. The second, and vastly more important and more arguable, reason for saying that it is only "in general" that legal philosophy condemns the *ex post facto* creation of criminal offences lies in the international sphere. We have said before that time and much consideration will be needed, before Nuremburg can be fitted in to the normal philosophic scheme. Perhaps, when the time comes for its appraisal, the most convenient explanation will be by way of comparison with attainder, forbidden by the Constitution of the United States but, in our English practice (at least up to the end of the century which gave birth to that Constitution), not regarded as falling within Blackstone's statement in the Introduction to the *Commentaries*, that "punishment for (an action afterwards converted to guilt by a subsequent law) must of consequence be cruel and unjust."

The Fire Service College

Many of our readers must, since the establishment of the National Fire Service, have made the acquaintance of the Fire Service College at Saltdean, which, in an enormous seaside hotel near Brighton, has survived the dissolution of the N.F.S. itself. They may, perhaps, have shared the surprise expressed by the Committee of Public Accounts, that so large a building, expensive to keep up and requiring a substantial staff, requisitioned during the war for the purpose of the Fire Services' College when this was a very big establishment, has been retained for the present greatly reduced number of students, and may have wondered, with that Committee, whether efforts to find substituted premises had been pressed so far as they should have been. Members of the public, whether or not they were acquainted with the existing college, must have noticed also with some surprise, and not improbably with distaste, the statement in *The Times* of August 29 that Wotton House, of which a good picture appeared on the back page of that issue, was to be converted into a National Fire Service College in substitution for the hotel at Saltdean which the Committee of Public Accounts criticized so strongly. The decision comes almost immediately after publication of the Report of the Committee on Houses of Outstanding Historic or Architectural Interest which, under the chairmanship of Sir Ernest Gowers, was appointed in 1948 by the Chancellor of the Exchequer. Wotton House was not among those stated to have been visited by the Committee, and we do not find that it is specifically mentioned in their text. It is, however, by reason of its literary associations among the best known of the houses of its type, and it has the added distinction of having remained for centuries in the hands of the Evelyn family. Sir Ernest Gowers' Committee condemned unreservedly the use for government office of houses possessing historic interest and architectural merit; it is, say the Committee, "natural" that government

departments should "ruin any fine house they occupy," the reason being the certainty of hostile parliamentary criticism if the house was used in the manner it deserves. The Committee was prepared to give tepid approval to the use of some meritorious houses for some educational purposes, but they regard the drawbacks of educational use as being too great for it to be, generally, a means of preservation. Much that is said here and in other paragraphs of the Report will be applicable to use as a Fire Service College, which must involve the dismantling of rooms and some measure of internal rearrangement.

STANDARD OF PROOF IN MATRIMONIAL CASES

The cases of *Davis* v. *Davis* (1950) 114 J.P. 56 and *Gower* v. *Gower* (1950) 114 J.P. 221, are of outstanding importance to all who have connexion with matrimonial jurisdiction. They are respectively concerned with the standard of proof required for the successful pursuit of allegations of matrimonial cruelty and of adultery, and the judgments which they contain refer to the whole question of proof in matrimonial cases in terms at once clear and forceful. Before we turn to examine them in detail it will be helpful to deal with two cases to which reference is made in *Davis* v. *Davis*, *supra*.

In *Churchman* v. *Churchman* [1945] 2 All E.R. 190, Lord Merriman, P., used these words in the course of a judgment directed to the requirements of proof of an allegation of connivance: "the same strict proof is required in the case of a matrimonial offence as is required in connexion with criminal offences so called." It will be noted that the learned President's dictum is comprehensive in its scope and that it is made in language which seems to suggest that the matter is beyond argument. But in view of the later pronouncement on this subject to which we will shortly turn it would be wise to assume that Lord Merriman's words were used advisedly against the peculiar background presented by the earlier law as to onus of proof in allegations of connivance. The old law required the establishment of intent, which was held to be an essential element of the offence in question, and the position immediately prior to *Churchman* v. *Churchman*, *supra*, was complicated enough for the learned editors of *Rayden on Divorce* (4th ed.) to say (on p. 126) "on principle it is difficult to suppose that the old rule that the presumption of law is against the existence of connivance and that, to establish it, intention must be clearly shown, has been wholly abrogated . . . the elementary rules of justice would seem to require that the ecclesiastical crime of connivance should still be proved by evidence . . . of intentional acquiesence." This was the legal background to the question which had to be decided in *Churchman* v. *Churchman*, *supra*, and it is significant that the passage in the learned President's judgment which immediately follows the words quoted deals with the presumption of law.

In *Ginesi* v. *Ginesi* [1948] 1 All E.R. 373, *Churchman* v. *Churchman*, *supra*, was mentioned. The point at issue in *Ginesi* v. *Ginesi*, *supra*, was the standard of proof required where adultery is alleged. Lord Justice Tucker's judgment contains the words: "It is a matter of history that in matrimonial cases, adultery having been described as a quasi-criminal offence, the standard of proof is a high one, and if authority is required it is to be found in the language used by Lord Merriman, P., in *Churchman* v. *Churchman*." Tucker, L.J., then proceeded to detail the earlier history of the law relating to the proof of adultery. Ecclesiastical lawyers in the Seventeenth century demanded *vehementes praesumptionis* as distinct from *suspicio probabilis*,—and as Vaisey, J., points out, the Latin *vehemens* is a very strong epithet. Lord Justice Tucker also quoted Sir George Hay, who said in *Rix* v. *Rix* (1777) 3 Hag. Ecc. 74: "Proof should be strict, satisfactory and conclusive." After mentioning other authorities the learned Lord Justice concluded this part of his judgment with this succinct passage: "Adultery was regarded by the ecclesiastical courts as a quasi-criminal offence, and it must be proved with the same strictness as is required in a criminal case. That means that it must be proved beyond all reasonable doubt to the satisfaction of a tribunal of fact." It is most instructive to observe that this judgment takes into account the origin of matrimonial jurisprudence in the ecclesiastical courts. The judgments in *Ginesi* v. *Ginesi*, *supra*, are definitely related to this background. The real issue raised in the cases already mentioned and in the two we are about to discuss is whether the assignment of matrimonial jurisdiction to the civil judiciary has entailed, as a matter of legal right and necessity, the assimilation of the rules of law and of evidence recognized in civil jurisprudence as a whole.

The case of *Davis* v. *Davis*, *supra*, leaves no doubt that in the opinion of the Court of Appeal matrimonial cases are in all respects civil cases, and the standards of proof recognized as right and proper in the criminal courts, whose powers affect the liberty of the subject, are not those required by courts whose concern it is to grant relief or redress.

In *Davis* v. *Davis*, *supra*, a husband's petition for divorce on the ground of his wife's cruelty had been dismissed, and the learned judge had used these words: "A charge of cruelty is a very serious charge to make, and this court has said over and over again that the party who makes it must prove it beyond all reasonable doubt. It must be proved with the same degree of strictness as a crime is proved in a Criminal Court." Commenting on this in the Appeal Court, Bucknill, L.J., said: "I myself think that the word 'strict' is sufficiently apt to describe the measure and standard of proof required of a charge of cruelty, and that it is unnecessary to introduce any question of the standard of proof required of a criminal charge."

Denning, L.J., in a far-ranging judgment, said: "In considering the standard of proof in divorce cases it is important to remember that it has been held by the House of Lords in *Mordaunt* v. *Moncrieffe* (1874) 39 J.P. 4, that a suit for divorce is a civil and not a criminal proceeding." Later he said: "There is a danger in asserting what the statute does not assert, that the charge must be proved beyond reasonable doubt because of the temptation it affords to give effect to shadowy or fanciful doubts . . . *Ginesi* v. *Ginesi* does not apply to cases of cruelty, and in such cases I do not think the court should require any higher standard than the statute itself requires, namely, that it should be 'satisfied.' The Statute referred to in this passage is, of course, the Supreme Court of Judicature (Consolidation) Act, 1925 (as substituted by the Matrimonial Causes Act of 1937).

In *Gower* v. *Gower*, *supra*, these views were restated, this time with especial reference to the question of adultery, and though technically the case has not overruled *Ginesi* v. *Genesi*, courts will approach any problem facing them on the proof of a charge of adultery in the light of *Davis* v. *Davis*, *supra*, and *Gower* v. *Gower*, *supra*. Denning, L.J., gave five reasons in *Gower* v. *Gower* for criticizing the decision in *Ginesi* v. *Ginesi*, and Bucknill, L.J., said: "The standard of proof required in a criminal case is higher than . . . in a civil action because in a civil action a matter may be proved on a balance of probabilities . . . while . . . in a criminal case the matter must be proved beyond any reasonable doubt."

CHIEF CONSTABLES' ANNUAL REPORTS, 1949

(*Concluded from p. 501 ante*)

38. COUNTY BOROUGH OF BOLTON

The population is 177,250 and the area 15,280 acres. The authorized strength of the force is 255 including one woman sergeant and eight constables. The actual strength of the force at the end of the year was 217. In August the Home Secretary intimated approval of the augmentation of the force by one chief inspector, two inspectors, four sergeants and nineteen constables, thus bringing the establishment to the figure quoted above.

Certain members of the force are trained horsemen and do duty at ceremonies when large crowds are anticipated. A separate mounted police section is not maintained, but horses are hired from local stables on contract. Steps have been taken to submit the horses to appropriate training for police work.

The authorization for special constabulary is 510 and the actual strength at the end of the year was 237. One hundred and fifty-seven members possess the Long Service Medal (awarded after nine years' service). Seventeen recruits were secured following the special campaign for the new Civil Defence Corps, coupled with an appeal for special constables. One woman has so far been selected.

Variations in the force followed the retirement on pension of one inspector, seven sergeants and one woman sergeant and five constables. In addition ten constables resigned and two constables transferred to other forces. Eighteen men and four women were accepted as probationers. The civilian staff number eight and they are employed as clerks and telephonists.

There are still many members in need of houses, but the number suffering real hardship is diminishing and the problem is not so acute as a year ago. This improvement is due to the consideration and co-operation of the housing committee, which since July, 1947, has allocated twelve houses annually for occupation by policemen. So far thirty-six dwellings have been reserved and up to the present twenty-five have been occupied.

The gross cost of the force, including police pensions, for the year ended March 31, 1949, was £163,456 and of this amount £85,930 was received from the Supplementary Government Contribution and for Special Duty, etc., so that the total cost falling on the rates was £77,525.

Indictable offences reported to the police were 857; in the previous year there were 1,004. Sixty-four *per cent.* were detected. Stolen property was valued at £26,223 of which that recovered amounted to £10,291. Seventy-three juveniles under fourteen years old and sixty-four between fourteen and seventeen years, were proceeded against; in the previous year the figures were sixty and seventy-one. One hundred and nine of the juveniles were charged with crime and twenty-eight with non-indictable offences, an increase of eight in indictable and a decrease of eight for non-indictable offences.

Traffic accidents totalled 1,230, nineteen of which resulted in fatalities compared with nine in 1948; 406 people sustained injuries, an increase of fifty-seven.

There are 448 licensed premises in the borough and sixty-two registered clubs. Two licensees were prosecuted for breaches of the liquor laws and six were cautioned for irregularities. One hundred males and seven females were charged with drunkenness, an increase of nine over the year before.

39. COUNTY BOROUGH OF PRESTON

The area of the borough is 5,684 acres and the population 119,665. The authorized establishment of police is 164 men and eight women, including a woman sergeant. At the end of the year the actual strength was 152 and seven women. In April, 1949, an increase in authorization of policewomen was approved by the Home Office from four to eight.

The force is augmented by the employment of fourteen civilians, as cleaners, clerks, telephone operators, canteen workers, porter and matron.

One First Police Reserve and ninety-five special constables are still on the strength and available for duty in emergency; the recruitment of special constables is in progress.

Variations in the force during the year included four sergeants and two constables pensioned on completion of service; two constables pensioned on medical grounds; six males and one policewoman who resigned. Four men and one woman were promoted to the rank of sergeant; sixteen men and four women were appointed on probation; seven men on the pension's list died.

Days lost through sickness numbered 1,397, a decrease of twenty days compared with the previous year. Forty-five days were lost through injuries on duty. Eighty-four applications were received for appointment as probationers and sixteen were finally selected. The rate of applications was only twenty *per cent.* of the pre-1939 figure, " and the anticipated stimulus to recruiting following the adoption of the Oaksey scales of pay has not so far materialized," says the report.

Three flats have been completed and occupied by members of the force, making a total of two houses and nine flats. Eight houses are in course of erection, and included in the building programme are a further twenty dwellings to be built as soon as sites are available.

There were 583 street accidents, ten of which proved fatal, compared with 506 (nine fatal) in the previous year. Of the 573 non-fatal accidents, 465 caused injury to 438 persons, 116 being children under fifteen years of age. Charges of drunkenness involved seventy-five males and four females, an increase of thirteen.

During the year 1,262 crimes were recorded, 833 offences were detected; 404 persons were prosecuted and in addition thirty-six adults and fifty-three children were cautioned. The value of property stolen was £11,407 of which goods amounting to £3,661 were recovered. Juveniles numbering 171 were reported for indictable offences, an increase of twenty-nine on the previous year.

40. BOROUGH OF BOOTLE

The population is 67,530 and the area 2,414 acres. The establishment is 123 and the actual number engaged at the end of the year 112. Three women are included in the strength. Ten men left the force, six to go on pension, two resigned, one died, and one was required to resign under Police Regulation 11. Eight men and two women were recruited and one transferred from another force. There are eight civilian employees who act as matrons, telephone operators and clerks. " The appointment of civilian telephone operators has released three men for street duty," says the report.

The strength of the special constabulary is 102. "I was disappointed with the small number of men who answered the appeal (in the Civil Defence campaign), yet it is comforting to know that with the present officers and men . . . there is a body of trained personnel willing to devote their time to public service, who will be invaluable if ever the necessity arises."

Of thirty-eight male applicants eight were finally selected as probationers, as compared with thirty-seven who were interviewed and five appointed, the year before. The reasons for rejections varied but twelve failed to pass the elementary test in education.

Fatalities through road accidents were six; for the three previous years the figures were nine, seven and eight; and 142 people were injured last year.

Crimes reported to the police numbered 1,148, the year before there were 1,111. Juveniles dealt with for crime totalled 194, for 1947 and 1948 the figures were 168 and 255 respectively.

Prosecutions for drunkenness were 107, an increase of thirty-five on the year before, but a decrease of fifty on the 1938 record. Four males were charged with being drunk in charge of motor vehicles. There are twenty registered clubs in the borough.

PASSENGER TRANSPORT CHARGES

One curiosity of the public inquiry by the court of the Transport Tribunal into the draft London Area (Interim) Passenger Charges Scheme was the absence of representations from councils of county districts, in marked contrast from submissions by bodies such as a local lodge of a plumbing trades union and a building apprentices action committee. Apparently, the two last-mentioned bodies, and numerous others of seemingly far less significance than councils of county districts, would have been or were heard at the inquiry as being, for the purposes of the Transport Act, 1947, s. 78 (2) (*a*), "representative of a class of persons using the services or facilities to which the scheme will relate."

Exclusion of councils of county districts will, presumably, occur in other parts of the country when inquiries are held into similar schemes, owing to provisions in the Act of 1947, ss. 81 and 125. Under s. 81, a representative body shall include any local authority within whose area any persons using passenger transport services are resident, but s. 125 defines a "local authority" as "the council of a county, the Common Council of the City of London, or the council of a county borough." Possibly, looking also at the latter part of s. 63 (2), where there is reference to "local authorities or the councils of county districts," s. 81 designedly excludes councils of county districts, and may exemplify a stream of thought flowing from smaller to larger administrative units.

Leaving aside principular organizational arguments, however, exclusion of councils of county districts for the purposes of s. 81 means that residents of particular areas may be deprived of the excellent representation which a local authority can provide, if their case is in competent hands. Residents of Kent within the London Transport area (rather more than one-third of the population of the administrative county) were not, for instance, represented by any local authority at the recent inquiry, and there were other extensive areas likewise unrepresented from this source, judging from responses by only nine out of twenty-three councils of counties and county boroughs who received notice from the British Transport Commission of their application for a charges scheme.

Comparatively little assistance is derivable from the preliminary decision of the court of the Transport Tribunal relating to the London area interim scheme as regards probable views on further "charges schemes" yet to be drafted by the British Transport Commission for other areas as directed by the Act of 1947, s. 76. The London area scheme is the first to be submitted by the Commission, precedent to others required to be submitted within a period of two years from the passing of the Act of 1947 (August 6, 1947), since extended by the Minister of Transport, as empowered by s. 76, by a further two years to August 6, 1951. In reaching conclusions on the London scheme, the present court "have avoided determining any questions of principle (other than that the activities of the Commission to which the London scheme relates ought to contribute its due proportion to the Commission's total financial requirements) which might tie the Transport Tribunal when it is called upon to pronounce upon the more comprehensive charging schemes which will in due course be submitted."

Even the "due proportion" as now postulated in principle and quantified by the court at £79 million per annum seems to be a vacuous conception, seeing that the Act of 1947, s. 3 (4), declares that all the business carried on by the Transport Commission shall form one undertaking, and directs the levy of "such fares, rates, tolls, dues and other charges, as to secure that the revenue of the Commission is not less than sufficient for making provision for the meeting of charges properly chargeable to revenue taking one year with another." In the last analysis, therefore, the Commission must exercise a statutory discretion imposed upon them to fix charges for various purposes in different areas at those which they think the "traffic will bear," within and to give effect to the over-riding consideration of long-term equality between their overall income and expenditure. For the present, after stating their conclusion that £79 million is a "reasonable sum" which the London scheme should yield, the court express the view that "it is improbable that the right contribution London ought to make to the total financial requirements of the Commission upon a long-term view can be determined accurately at the present time, and that a present assessment possibly too low is more justifiable than one possibly too high."

Looking beyond the year 1951, the court assumed that, as by degrees steps are taken to secure a properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods, economies will progressively be effected which may be expected to redound to the benefit of the users of the different services of the Commission including the users of the services to which the present London scheme relates. By the time, a considerable way ahead, that schemes for the country as a whole are in force, the present scheme for London will have been operating for some years and the financial requirements of the Commission may have altered to an extent requiring a re-assessment of the contribution London ought to make. Earlier this year, the chairman of the Commission (Sir Cyril Hurcomb) reckoned that at the end of, say, a five years' programme, economies being effected by the railways should represent an annual saving of some £3 million. A gradual improvement in the financial position of the Commission assumed by the court was apparently responsible, in the main, for their view that an actual yield of £79 million, compared with an estimated yield of not less than £80 million from the proposals submitted by the Commission, would represent "the contribution which the London area should be

called on to make to the total financial requirements of the Commission."

Two ways of reducing the yield of the new London Scheme from the £80 million *per annum* estimated by the court of the Transport Tribunal, to the £79 million regarded as a " reasonable sum," were proposed in the preliminary decision. These were by reductions in the early morning fares proposed by the Commission in place of workmen's fares, and by continuance of the shift workers tickets. The early morning fares originally proposed would, the court were satisfied on the evidence they had heard, " impose more hardship on travellers at such fares than the charges proposed for other travellers," and shift workers would be subjected to " a burdensome increase " if existing facilities were withdrawn. Part of the evidence was that £1,800,000 of additional revenue would come from some 450,000 early morning and 50,000 shift worker passengers, while the remaining passengers numbering approximately 7,500,000 would make a disproportionate contribution of £1,900,000. Amendments submitted by the Commission on the twenty-sixth day of the court's sittings were designed to reduce annual revenue from the two sources in question by about £923,000.

Criticisms made on behalf of Middlesex county council, directed to showing that a fair contribution of the London area should be £75.1 million per annum compared with the Commission's estimate of £82.4 million that ought to be obtained, were probably important factors contributing to the decision upon a sum of £79 million by the court of the Transport Tribunal. Two substantial items of difference which received particular attention were £2 million provided for the general reserve to be established and maintained by the Commission under the Act of 1947, s. 92, and £2 million provided for replacement reserve under s. 93, both of which sums were included in the Commission's £82.4 million.

A contention that these items should be struck out of the Commission's estimate was based on the premise that such reserves cannot be created until the Commission's accounts are in credit (an accumulated deficiency of £40 million was estimated at December 31, 1950), although it was admitted that a surplus should be estimated for. The conclusion of the court was that in estimating the revenue requirements of the Commission from their passenger operations in the London area, which is the target of the proposed charges, some provision should now be made for a contribution to the central funds of the Commission to be applied to the liquidation of the accumulated deficits and subsequently to the creation of necessary reserves as directed by ss. 92 and 93 of the Act.

How much of the £79 million annual contribution of the London area is to be regarded as a contribution to accumulated deficits is not stated in the court's preliminary decision, and the context in which " subsequently " is used appears to contemplate a contribution " to the creation of necessary reserves " from a surplus in the Commission's accounts when that anticipated position is reached during the period of " some years " over which the present new scheme will be operative. Superficial reading of s. 92 of the Act of 1947 and its mandatory character (the Commission shall establish and maintain a general reserve) suggests that some immediate provision is required. So it may be, but the source of the provision is not specified (nor is the amount, which may be purely nominal); therefore, the present London Scheme need not make such provision immediately, which appears to be the view of the court of the Transport Tribunal.

By what test a nominal provision of general reserve could be regarded as a " proper allocation " directed by s. 93 to be a " charge to revenue in every year " is, of course, a matter open to lengthy argument. " Proper provision " for depreciation or renewal of assets also directed, among others, by s. 93, is also open to argument, less lengthy than those relating to general reserve because there are physical features (wasting or obsolescing assets) which are the tangible objects of the statutory direction, but equally lengthy when dealing with the bearing of s. 3 which permits the Commission to make " provision for the meeting of charges properly chargeable to revenue, taking one year with another." The day when these arguments will be settled, if they ever will be, is distant. In the meantime, the decision of the present court of the Transport Tribunal puts the passenger charges in the London area on to orderly bases with which comparisons will be possible when charges schemes are formulated for other parts of the country, and which will facilitate subsequent modifications if or when circumstances so require.

LONDON CABS

The decision in *London General Motor Cab Company, Ltd.* v. *Inland Revenue Commissioners*, reported in *The Times* of July 14, 1950, is not in itself of wide interest to the ordinary taxpayer. The point was whether a company whose business consisted in letting out motor cabs in London were liable to an assessment in respect of profits tax. The company's contention was that they were statutory undertakers in the trade of carrying passengers by road, which would have meant that they were exempt from that tax. This contention was not accepted by Vaisey, J., as it had not been by the General Commissioners, and to the ordinary reader it will seem that it must have required courage to argue. The basis of the suggestion that they were statutory undertakers was that a cab proprietor must in London have a licence from the Secretary of State, who in practice delegates his power to the Commissioner of Police, and that the fare which may be charged by the driver is regulated by statute, or by the Secretary of State under statutory powers.

What is of interest to the public about the case is that it shows what may not be generally known, but has recently become of general importance, namely the terms on which London cabs, other than those worked by owner drivers, are made available to public use. Each cab is let out by the proprietor to a driver, who must himself have a licence from the Secretary of State acting through the Commissioner of Police, but the driver does not receive a wage. The company undertake the maintenance of the vehicle and provide petrol, oil, and other necessities for its running. They decide at what hours it may be taken out, and the ordinary contract between them and the driver enables them to say in what district he shall work, although it was not the practice of the company who were involved in this case to do so. The point which most directly affects the passenger is the charge and, in the arrangement to which the case related, the agreement between the company and the drivers was for the company to take two thirds of the fare for time and distance shown on the taximeter. This was a standard agreement applying to all firms. The driver took the other one third, together with any payments made by the passenger for extras whether these were shown on the meter or not. Under the London Cab Order extras must be so shown, but this provision is only for the protection of the passenger against overcharges. The companies

who let out cabs to drivers make no claim to these extras, and indeed we understand that some of the meters now in use do not even show a total for the extras at the end of the day, although some meters do. The driver is of course also entitled to anything he receives from his passenger as a tip.

It will be remembered that the reason for a recent strike of London drivers was their claim to a larger proportion than one-third of the amount shown on the meter for distance and time, their contention being that the increased fares, which were authorized by the Home Secretary this year, would mean a reduction of the amount received as tips. The strike resulted in a compromise, by which the companies agreed to let the men have two-fifths instead of one-third of the metered charge. It may also be remembered that there was not long ago a case before a metropolitan magistrate, in which it was suggested that a passenger who gave a tip to a cab driver was guilty of aiding and abetting the statutory offence of overcharging. This point has never so far as we know been tested in the courts either in the metropolitan police district or under the Town Police Clauses Act, 1847, which so far as the charges for cabs are controlled by law at all, as in most places they are not, covers the position elsewhere. We certainly entertain much doubt whether the ordinary law of aiding and abetting is applicable.

BIAS WHERE DISABILITY REMOVED

A correspondent reminds us that at 107 J.P.N. 398 we spoke of the common law doctrine of bias, as possibly invalidating a decision of a local authority reached with the aid of votes given, and perhaps after speeches made, by members who had a pecuniary interest in the subject matter but had, under s. 76 (8) of the Local Government Act, 1933, been relieved of their disability for taking part in the discussion and for voting. Our correspondent suggests that, even if bias could have been successfully alleged before 1949, against (say) a decision in favour of giving a contract to a co-operative society, reached with the aid of votes of members of that society, nevertheless the position has now been altered by s. 131 of the Local Government Act, 1948. Speaking of that section he continues: "Would you still say that when Parliament has expressly permitted co-operative members to take part in matters in which a council and a co-operative society are directly concerned, the court could or would interfere if bias could be shown?"

The first thing to say on this is that our learned correspondent has read into the section something which is not there. Everybody knows that the reason of s. 131 of the Act of 1949 was to ease the position of co-operative societies and members, and to relieve the Minister of Health of what had become a nuisance, and largely a routine, namely the stream of applications under s. 76 (8) of the Act of 1933, to remove the disability in co-operative cases. Hence the figure of £200 in the new section. But the new section does not, as our correspondent states, "expressly" permit co-operative members to take part: it does not even mention them. A judge reading s. 131 would not be justified in finding that Parliament designed any co-operative privilege.

The point can perhaps be considered better by assuming a share holder in a company, not a co-operative society, whose holding is not more than the £200 nominal mentioned in the section. He no longer requires, as he would have done before 1949, any dispensation from the Minister; he is free to argue and to vote. Suppose him to be an influential councillor, perhaps leader of one of the party caucuses. Or suppose a proposal in favour of his company is carried by a majority of one, and that he has voted for the proposal.

It can be said that Parliament has provided for his taking part and voting, and therefore that he may be in a better position than a councillor who is enabled to discuss and vote by the Minister under subs. (8), and not by Parliament. But as against this, until Parliament created the disqualifications which occurred in the Municipal Corporations Act, 1882, and the Local Government Act, 1894, now repealed by the Act of 1933 and replaced by the disability in s. 76, there was neither disqualification nor disability, so that a councillor who spoke and voted in favour of a course which benefited his pocket was within his rights. Yet from time to time the courts did, in effect, truncate those rights by interfering with the result on the ground of bias, and (it can be argued) neither s. 76 of the Act of 1933 nor s. 131 of the Act of 1949 really touches this. The former section is penal; subs. (8) of s. 76 and s. 131 of the Act of 1949 do no more, it can be said, than remove a personal disability—the one through a decision of the Minister, the other by the direct force of statute—and so relieve an individual of penalties. The sections, on this view, do not affect the power of the courts to deal with bias, which is quite a different matter, a matter affecting, not an individual's position, or not that alone, but the position of the whole body. In this connexion, it may be observed that in *R.* v. *Hendon Rural District Council* (1933) 97 J.P. 210 the councillor had not taken any part in the proceedings, but his presence vitiated the decision. In *R.* v. *London County Council* (1892) 56 J.P. 8 there was no question of personal interest, but the proceedings were held to be invalid: *cf. R.* v. *North Worcestershire Assessment Committee* (1929) 93 J.P. 199. It would, logically, be odd if a person's interest as a public administrator vitiated conclusions reached by a body to which he belongs, but his private pecuniary interest did not.

There is much to be said for this view: certainly s. 76 (8) of the Act of 1933 and s. 131 of the Act of 1948 do not, on the face of them, deal with anything except the individual's status and liability. Against this it can be argued that so narrow a view of what is logical produces a result illogical in another way, namely the quashing of a decision upon the ground of its being reached by means of votes which Parliament has directly or indirectly allowed (expressly) to be given, whether these be the votes of co-operative members or company shareholders.

We find the arguments balanced very evenly. At 107 J.P.N. 398 we did not, as will be seen on reference back, advance a positive opinion on the law; we merely said the point might arise for settlement one day. *Lumley*, we have since noticed, says pretty much the same. We are inclined to come down in favour of saying that the courts would not find bias in such cases, and it may be not without significance that, in spite of the bitterness existing in many of these cases, nobody has yet been encouraged (it seems) by his legal advisers to attack his opponents along this line. But we cannot say that we feel confident about the law.

VOTIVE MASS

A Votive Mass of the Holy Ghost (the Red Mass) will be celebrated on Monday, October 2, 1950 (the opening of the Michaelmas Law Term) at 11.45 *a.m.*, at Westminster Cathedral. Counsel will robe in the Chapter Room at the Cathedral. The seats behind counsel will be reserved for solicitors. Those desirous of attending should inform the hon. secretary, Society of Our Lady of Good Counsel, 6, Maiden Lane, W.C.2, so that an adequate number of seats may be reserved.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL
(Before Humphreys, Morris and Sellers, JJ.)
R. *v.* HARRIS
August 22, 1950

Criminal Law—Suspected person loitering—Evidence of known bad character—References to previous convictions—Prevention of Crimes Act, 1871 (34 *and* 35 *Vict., c.* 112), *s.* 15—*Criminal Justice Act*, 1948 (11 *and* 12 *Geo.* 6, *c.* 58), *s.* 12 (1).

APPEAL against conviction.

The appellant was convicted at the County of London Sessions of being in possession of a firearm, contrary to s. 23 (2) of the Firearms Act, 1937, when arrested for an offence specified in sch. II to the Act, namely, the offence under s. 4 of the Vagrancy Act, 1824, of being a suspected person loitering with intent to commit a felony. To prove the known bad character of the appellant, as was permitted under s. 15 of the Prevention of Crimes Act, 1871, evidence was given at the magistrate's court by a detective officer that on December 21, 1949, he had been present at the County of London Sessions when the appellant was conditionally discharged for twelve months, and a certificate of the conviction of the appellant of being in possession of housebreaking implements which gave rise to that order was put in. The detective officer was conditionally bound over and did not give evidence at the trial, but the deputy-chairman referred to this conviction in his summing-up and further told the jury that on another occasion the appellant had been bound over for being a suspected person loitering with intent to commit a felony. No evidence relating to this last matter had been given. By s. 12 (1) of the Criminal Justice Act, 1948: " . . . a conviction of an offence for which an order is made under this Part of this Act placing the offender on probation or discharging him absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender."

Held, (i) that the effect of s. 12 (1) was to absolve an offender from the legal consequences which would otherwise flow from a conviction; (ii) that the fact of the appellant having previously been found guilty of possessing housebreaking implements by night was properly mentioned by the deputy-chairman, but that in such a case the proper course was not merely to refer to the accused person having been convicted of such-and-such an offence on such-and-such a date, but to inform the jury that on a particular occasion he did something which showed him to be a person of bad character, included in the matters which might be proved under this head being the fact that the appellant had admitted in court that he was, or was found by a jury to be, a person who had committed a particular criminal offence; (iii) that as the deputy-chairman in his summing-up had referred not only to that previous conviction, but also to another of which no evidence had been given, the conviction must be quashed on that ground.

Counsel: for the appellant, *Craymer*; for the Crown, *Durand*.

Solicitors: *Registrar of the Court of Criminal Appeal*; *The Solicitor, Metropolitan Police*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

INSTITUTE OF MUNICIPAL TREASURERS AND ACCOUNTANTS

Matters of general interest in the report of the council to the sixty-fifth annual general meeting and conference, held at Harrogate in June, included further reference to the extent to which members of the Institute have entered the service of public bodies set up to administer nationalized services. An analysis of membership since the inauguration of the nationalized gas service shows that the members and students serving the public authorities, as distinct from local government, number approximately 500 out of a total membership, including students, of 3,800. The council regards this as justification for the action taken two years ago in extending the constitution to meet this development and welcomes this opportunity for its members to play a vital part in building up the financial organization of the new authorities. The examinations and membership committee have in consequence completed the first stage of the revision of the examination syllabus in order to widen the scope of the institute's diploma to cover the major specialized services. The council is examining the possibility of other modifications of the institute structure which would help it to provide the same background and assistance to the public boards as it has given up to now to local government.

Mention was made of suggestions received by a number of rating authorities from the Ministry of Health on the form of statement of rate levies on the reverse of their rate demand notes dealing particularly with the method of allocating receipts under the Local Government Act, 1948, Parts I and V, between county councils and county districts. After consultations, the Ministry withdrew their suggestions and agreed that the form of statement is a matter for the rating authority to decide, within the framework of the Rating and Valuation (Forms of Demand Note) Rules, 1948 (S.I. No. 653) made under the Rating and Valuation Act, 1925, s. 58.

Income tax questions dealt with during the year included four arising out of the Electricity Act, 1947 (withdrawal of a concession relating to wear and tear allowances not fully utilized), the National Health Service Act, 1946 (procedure when refunding contributions to officers subject to the National Health Service Superannuation Regulations), the Local Government Act, 1948 (loss of set-off where a county council makes a contribution, under s. 126, to housing expenditure of a county district council) and the Rural Water Supplies and Sewerage Act, 1944. Under the Act of 1944, the expenses of separate water undertakings serving various parishes in rural districts were pooled with the result that the several undertakings operated by a rural authority had to be regarded as one for tax purposes and assessed accordingly. The Inland Revenue contend that the financial merger must be regarded as a change of ownership and that the calculations of profits and losses for tax purposes for the two years immediately preceding the merger should be revised by reference to the accounts of those years. In many authorities this would have no very great effect on its finances; but the income tax committee made representations to the Board that no effective change of ownership had taken place and that where there were statutory losses capable of being carried forward under the Finance Act, 1926, s. 33, those should be made available against the profits of the merged undertakings. These representations have not proved acceptable to the Board of Inland Revenue.

One reaction of local authorities to the possibility of a marked increase of rate levies anticipated in the presidential address of Mr. James Scougal, F.I.M.T.A., F.S.A.A. (borough treasurer of Beckenham) was a likelihood that they would seek a further review of the relationship between central and local finance, involving increased Exchequer grants, or renewal of the search for new sources of income. At the same time, he thought it strange that local authorities had not made a closer examination of the present incidence of the burden of local rates before an attempt might be made to change that incidence by transfer to national taxation or other sources of income. As a result of failure to make that examination, the initiative in changes made in the financial relationships between the Exchequer and local authorities, and in the local rating system itself, has always been with the Ministry of Health whose present view appears to be that the fairest incidence will be obtained over the national field by levelling rate poundages as far as possible through the system of Exchequer grants, subject to uniformity of valuation being obtained based on the methods of valuation laid down in the Local Government Act, 1948.

Asking what should be the aim of the rating and grants system with regard to incidence, the president recalled a view given by the Minister of Health in 1947 when referring to changes to be made in the method of arriving at rateable values and the proposed (since enacted) Equalization Grant; the aim was then stated to be "that two citizens occupying roughly the same sort of property should pay roughly the same sort of contribution to rates." Therefore, the abandonment of rental value as the basis for rating assessments was understandable, for rental values of similar properties vary between wide limits throughout the country. The new basis of hypothetical cost of erection, however, is to be applied only to the assessment of modern houses, leaving rental value as the basis for all other properties, and even amongst modern houses differences in assessments are to be preserved by using hypothetical building costs which vary according to the area in which the houses are situated.

A review of block grants under the Local Government Act, 1929, as amended, and the superseding Act of 1948, included the not very comforting statement that unjustifiable benefits admittedly accruing at present to undervalued areas through these changes are to be obviated in due course by the achievement of uniformity of valuation under a new regime, but in the meantime such benefits are being

received at the expense of other areas. Those authorities which receive a substantial Equalization Grant must, the president said, be amazed at the beneficence of their new (national Exchequer) ratepayer, a virtue he has not always displayed in other connexions, who as long as normal practices are followed in financing expenditure raises no awkward questions as to its scale. These authorities may well wonder how long the grant is likely to be continued in the face of rising expenditure without the Exchequer demanding a voice in settling the scale of that expenditure to which, in so many cases, it is such a substantial contributor.

The principle of equalization of rates seemed to the president now to be firmly established, with every likelihood that it will be made more and more effective by a movement towards further equalization of rate poundages, particularly after uniformity of valuation on the basis laid down in the Local Government Act, 1948, is attained. Such a movement even after the revaluation would increase the dissatisfaction which at present exists with regard to the rating and grants system, and it was thought that local authorities would be well advised to consider what further alterations should be made in both to make equalization of rate poundages acceptable as a means of ensuring a fair incidence of local rates and yet leave unfettered the discretion and independence of local authorities with regard to the scale of their expenditure.

In opening the second paper on the control of local authority finance Mr. G. B. Esslemont, M.A., LL.B., B.Com., F.I.M.T.A., C.A. (city chamberlain, Glasgow), commented that to bring together the local authority point of view so ably expressed by Mr. Hayter-Hames and the financial officer's point of view, brings home to members of finance committees and to financial officers alike that financial control to be fully effective must be the result of collaboration between them.

A number of instruments of control dealt with by Mr. Esslemont commenced with the finance committee which, from the councillor's point of view, is the most important, being the one in which he can play the greatest part. The whole pattern of an authority's expenditure can be affected by the way in which the finance committee carries out its responsibilities. If its members become merely " Yes " men then not only are the councillors losing control but the treasurer cannot make good the leeway and may even have difficulty in applying the control which it is his independent duty to exercise. A " middle course " suggested with regard to representation of the finance committee in the deliberations of spending committees was that the chairman of the finance committee (or a member of the finance committee nominated by him) should be entitled to attend all committees and join in their debates, without power to vote, when annual or supplementary estimates or any proposal involving expenditure in excess of a limit from say, £500 to £5,000, according to the size of the authority, is being considered.

Preference was expressed by Mr. Esslemont for somewhat informal procedure in the preliminary consideration of draft estimates before submission to the finance committee prior to embodiment in the annual budget. In Glasgow, draft estimates, with comparative figures for the old financial year are considered at a meeting between the chairman of the finance committee and the treasurer on the one side and the chairman and chief officer of the spending committee on the other, and adjustments (not all reductions) are made. Where possible, comparative figures for five or more years were suggested, and reference made to practice under standing orders in Manchester where figures for not less than ten preceding years are submitted in a separate publication.

Financial figures in all reports to committees should be the responsibility of the treasurer, who should, in addition, be responsible for giving his observations on the financial implications of the proposals. If the report is prepared jointly by the head of the spending department and the treasurer, the latter's observations can be incorporated. The standing orders and financial regulations should, Mr. Esslemont said, provide that a copy of any report involving expenditure should be in the hands of the treasurer a reasonable time (say, four to five days) before the first committee or sub-committee meeting at which it is to be considered in order that his observations may be submitted simultaneously. Discussing the contents of financial standing orders and regulations, he was aware of dislike for too many references to " the treasurer," due to a feeling that the responsibility should rather be laid on " the committee." Mr. Esslemont agreed that too much should not be left to depend on the strength of personality of the treasurer as the quality of successive holders of the office may vary greatly, but his own view was that if the treasurer is to do his job properly he must be prepared to face up to the responsibility of being the major administrative instrument in financial control.

In contrasting the new organization of electricity and gas supply with former municipal control of those undertakings, Mr. F. E. Price, F.S.A.A., A.I.M.T.A. (a member of the Wales Gas Board and of the Cwmbran Development Corporation), said, in his paper on some aspects of public board finance, that there could be no doubt that the local authorities took understandable pride in the development of the efficient undertakings which they handed over to the new boards. It seemed evident from the statistics available that the undertakings were run almost entirely from the standpoint of giving the consumer as cheap a service as possible, and not for the purpose of producing profits for relief of rates. The consumer's interest is now represented by the area consultative council and its district committees. They have power to consider tariffs, services, and facilities, and to report and make representations to the area board, and they must be informed of the board's general plans and arrangements; the consultative council may make representations to the Minister. They do not, however, control the board and their consent is not required for any purpose. Nevertheless, a consultative council is a channel through which consumers may make their views felt and through which a board may ascertain local opinion.

Banking arrangements with the nationalized electricity industry are such that the British Electricity Authority acts as the main financing agency for the whole industry, including the fourteen area boards. A balance of indebtedness broadly equal to the book values of the assets less liabilities taken over by each board, with further adjustments, is the basis on which the interest paid by the B.E.A. (comprising interest on British Electricity Stock and temporary borrowing as well as interest reimbursed to local authorities) is apportioned at a flat average or pool rate. The capital financing of the electricity industry thus follows closely the principles of the consolidated loans fund which has been operated by a considerable number of local authorities for a good many years. Whether the gas industry will adopt consolidated loans fund principles in dealing with borrowings by the Gas Council on behalf of the area boards remains to be seen.

Amortization of capital was regarded by Mr. Price as a question offering plenty of scope for controversy and of fundamental importance to the future financial health of the nationalized industries. Pre-nationalization methods adopted by gas and electricity undertakers in providing for depreciation or its equivalent differed according to the type of undertaker. The loans raised by local authorities to finance their capital expenditure were subject to annual provision for redemption within the repayment periods allowed by the statutory borrowing powers, such periods being based on the lives of the assets. The annual provision so made was usually at least equivalent to a full provision for depreciation. In the case of electricity companies, the capital being permanent in character, the revenue account was usually debited with provision for the depreciation of the assets during the year. Gas companies usually followed the Double Account system, under which the capital assets were retained in the accounts at their original cost, the cost of renewing and maintaining the undertaking being charged to revenue account. " Comprehensive provision" is now made out of revenue each year by the British Electricity Authority, covering stock redemption fund contributions, the element of principal in local authority loan charges reimbursed and corresponding repayments of inherited loans, and the remainder of the provision is for depreciation of assets.

An illustration was given by Mr. Price of the effect of the global sum payment, under the Local Government Act, 1948, s. 97, by the electricity industry towards local government if the impending revaluation of property under the Act of 1948, Part III, brings about a substantial increase in the rateable value of the country. If, for instance, the average rate for England and Wales fell from 17*s.* 10*d.* to 15*s.* in the £, the global sum of £11,250,000 (which, incidentally, is also partly dependent on the quantity of electricity sold) would be reduced to £9,400,000. The gas industry continues rateable on the same basis as hitherto, and it was regarded as a little unfair that that industry may have the benefit of any reduction in rate poundage due to the general revaluation partially discounted by its own increased rateable values, arising from lower amounts of rate payments to be deducted in computing assessments by the profits method.

Two aspects of financial relations between new town development corporations and local authorities were mentioned by Mr. Price. Where the local authority, at the request of the development corporation, incur expenditure on services which would not otherwise have been incurred until necessitated by normal development, an increased burden may be cast on existing ratepayers until the properties erected by the Development Corporation provide sufficient rate revenue to meet the additional annual cost of the advanced development of services. On the other hand, in some instances the provision of the services required for the new town will be undertaken by the development corporation itself. Where these circumstances exist the financial arrangements would normally provide for contributions by the local authority towards the expenditure incurred by the development corporation.

The successful discharge of the functions entrusted to the new public boards, including those associated with the hospital service, was regarded as a matter of vital concern to the prosperity of the country. There may, Mr. Price said, be a species of organization which correctly strikes a balance between the dangers of over centralization

and excessive control and restriction from the top on the one hand, and lack of adequate control by the responsible body on the other. The point of equilibrium may not be the same for every type of board, nor indeed for different boards of the same type.

ROAD ACCIDENTS, MAY, 1950

The return of the number of persons reported to have died or to have been injured, as a result of road accidents in Great Britain during the month of May, 1950, is as follows :—

Classification of persons	Total		
	Died	Injured	
		Seriously	Slightly
Pedestrians :—			
(i) under fifteen	70*	501	1,601
(ii) fifteen and over	92	603	1,518
Pedal cyclists :—			
(i) under fifteen	15	241	831
(ii) fifteen and over	63	810	2,505
Motor cyclists	91	821	1,554
Drivers	17	292	962
Passengers (sidecar or pillion) :—			
(i) under fifteen	—	8	39
(ii) fifteen and over	23	214	530
Passengers (other vehicles) :—			
(i) under fifteen	7	77	369
(ii) fifteen and over	41	547	2,173
All persons 1950	419	4,114	12,082
1949	377	3,525	10,746

* Includes one horse rider.

VITAL STATISTICS—MARCH QUARTER

Provisional vital statistics for England and Wales for the March quarter of this year given in the Registrar General's Quarterly Return show that the infant mortality and stillbirth rates were again the lowest on record for the first three months of the year. The infant mortality rate was thirty-seven per thousand related live births, compared with forty in the corresponding period a year earlier and an average of fifty-nine for the first quarter of the previous ten years, 1940-49. The stillbirth rate was 22.9 per thousand total live and stillbirths, or 0.2 lower than that for the first quarter of 1949.

There were 180,062 live births registered during the quarter, representing a rate of 16.7 per thousand total population. This compares with 186,561 births and rate of 17.3 in the March quarter, 1949. For the first quarters of the five years 1940-44 the average birth rate was 15.7, for 1945-49 was 18.6, and for the ten years 1931-1940 it was 14.9. Illegitimate births formed five *per cent.* of the total compared with 5.1 *per cent.* in the first quarter last year. Deaths registered during the quarter numbered 151,176, representing a death rate, based on the 1949 total population, of fourteen per thousand. This was 0.9 below the rate for the same period last year and 0.6 below the average for the March quarters of the five years 1944-48. The births registered exceeded the deaths by 28,886, the corresponding natural increases for the first quarters of the years 1949, 1948 and 1947 being respectively 25,282, 69,421 and 59,794.

During 1949 the number of deaths from influenza was 5,658, giving a death rate of 0.13 per thousand civilian population ; the rates for 1948 and 1947 being 0.03 and 0.08. There were 19,722 deaths from tuberculosis, making the death rate for 1949 0.46 per thousand ; the death rates in the two preceding years being 0.51 and 0.55 respectively.

In 1949 the rates of infant deaths in various parts of the country showed wide differences, rates in the northern areas being generally higher than those in the south. For example, the England and Wales overall rate of thirty-two per thousand related live births, was exceeded in the following regions—Northern (forty-two), Wales and North Western (thirty-nine), East and West Ridings (thirty-six), and Midland (thirty-three), and was equalled in North Midland ; but the rates in the other regions, *viz.*, Eastern (twenty-five), London and South Eastern (twenty-five), Southern (twenty-six) and South Western (twenty-nine)—were all less than the general average.

SPEED LIMIT OF UTILITY VEHICLES

Utility vehicles (without trailers) of the shooting brake, estate car, and hotel bus type, used mainly for the private carriage of passengers and their personal effects will be freed from their present thirty miles per hour speed limit if regulations which have been made by the Minister of Transport are approved by each House of Parliament.

The thirty miles per hour limit will, however, continue to apply to any of such vehicles authorized to be used under a goods carrier's licence or which would need a licence but for exemptions given under the provisions of s. 1 of the Road and Rail Traffic Act, 1933, or but for the fact that they are in the service of the Crown or of the British Transport Commission, *i.e.*, broadly speaking, any vehicle used for the conveyance of goods by way of trade, business, or profession or for hire or reward.

The Regulations are entitled the Motor Vehicles (Variation of Speed Limit) Regulations, 1950.

INDUSTRIAL REHABILITATION

The help provided by the Ministry of Labour and National Service in connexion with industrial rehabilitation does not appear to be as widely known and appreciated as it deserves. It is important that it should be realized, therefore, that the scheme is open to any man or woman aged sixteen and over who has suffered illness or injury. Attendance at an industrial rehabilitation course can then be arranged if he or she needs it when medical treatment has been completed or has at least reached the stage when the main need is to get ready to resume work. All who may come into contact with such persons should therefore know that the service is available as apparently the Ministry are under the impression that there are some injured persons in the community who could resume their place in the industrial field if they undertook a course of rehabilitation. The scheme was explained fully in the Ministry of Labour *Gazette* for May, 1950, and is further set out in an illustrated leaflet which was issued recently by the Ministry. Industrial Rehabilitation Units have been set up in different parts of the country and with the exception of one at Egham in Surrey, which is entirely residential, and one at Leicester which has residential accommodation for about fifty men, they are non-resident.

NEW COMMISSIONS

LONDON COUNTY

Richard Anderson, 27a, Wickham Road, S.E.4.
Lady Dorothy Holroyd Archibald, 5, Hanover House, N.W. 8.
Miss Dora Barnes, 42, Matthias Road, N.16.
Edwin Bayliss, 48, Biddlestone Road, N.7.
Thomas Edward Beale, 368, Holloway Road, N.7.
Alfred Derek Bermel, Camperdown House, Half Moon Passage, E.1.
Walter Guy Robert Boys, O.B.E., 12, Village Way, S.E.21.
John Edward Evan Cook, 77, Alleyn Road, S.E.21.
George Cox, 26, Montague Street, W.C.1.
William Coyne, 8, Iver House, Halcomb Street, N.1.
Gordon Edgett, 61, Providence House, Emmott Street, E.14.
Roy Walter Kelsey Edgley, 61, Victoria Drive, Wimbledon Park, S.W.19.
Harry Aron Goodman, 27, Lordship Park, N.16.
Charles William Robert Gorrill, 23, Viewfield Road, West Hill, Wandsworth, S.W.18.
Arthur William James Anthony Greenwood, M.P., 8, Gainsborough Gardens, N.W.3.
Mrs. Hilary Alicia Halpin, 41, Eaton Square, S.W.1.
Brigadier Thomas Carleton Harrison, C.B.E., Flat 12a, 47, Grosvenor Square, W.1.
Dame Caroline Haslett, D.B.E., 35, Grosvenor Place, S.W.1.
Dr. Eileen Pearl Hulbert, 165, Ashley Gardens, S.W.1.
Lady Dorothy Hunt Hume, 83, Lee Road, S.E.3.
Cecil Goldley Hyde, 91, Clapton Common, E.5.
Albert Bernard Kennedy, 206, New Kent Road, S.E.1.
Stanley Herman Thomas Lindenau, 24c, Albemarle Road, Beckenham, Kent.
Mrs. Gladys Mary Little, 30, Walterton Road, W.9.
Bernard Morgan, 69, Downs Park Road, E.8.
Douglas Overall, 63, Exeter House, Putney Heath, S.W.15.
Walter Sidney Pennicutt, 114, Malmsbury Road, E.3.
Norman George Mollett Pritchard, 4, Rusham Road, Battersea, S.W.12.
Charles James Ratchford, 27, Harmood House, Ferdinand Estate, N.W.1.
The Hon. John Trevor Roberts, 43, Campden Hill Square, W.8.
Frederick Ernest Sanders, 37, St. Peter's Avenue, E.2.
Albert Walter Scott, 317, High Holborn, W.C.1.
Hubert Secretan, 215, East Dulwich Grove, S.E.22.
Mrs. Florence Kathleen Swash, 19, Alleyn Park, S.E.21.
Frank Charles Trehern, 447, Archway Road, N.6.

NEW ROMNEY BOROUGH

Mrs. Marjorie Colt, Plashes, Littlestone, Kent.

REVIEWS

An Introduction to International Law. By J. G. Starke. Second Edition. London: Butterworth & Co. (Publishers) Ltd. Price 27s. 6d. net.

Described by the publishers as an elementary textbook, this book contains surprisingly complete information. Not merely university students, but also recruits to the diplomatic service and to the staffs of the various international bodies will find it answering most of their every-day problems, or that at least a clue to the answer can be found, on reference to Mr. Starke's text and the works noted in his bibliography. The present, second, edition has been revised to give an account of the developments in international law and international and internal practice which have taken place during and since the second world war. The chapters on the law of war and neutrality have been expanded; an entirely new chapter has been inserted dealing with international institutions, and the historical matter at the beginning of the book has been enlarged. The method of arrangement is to set out first the general conception of international law, followed by the nature of states in their juristic capacity; then rights and duties, and other transactions among themselves, followed by disputes, war, and neutrality, and the new matter already mentioned, extending to fifty pages, on the subject of international institutions. By comparison with the works on international law which were studied forty years ago, the most obvious change is the comparatively small part assigned to the laws of war and neutrality, and the relatively important place given to state responsibilities and to the relation between states and individuals. All this is in accord with the trend of general opinion, as is the explanation in this edition of the book, of the work and jurisdiction of the International Court of Justice. The chapter on "recognition" has been re-written in the light of juristic research which has taken place since 1945, but it is not denied that the subject is still in an unsettled condition, as appears from the divergencies in regard to Israel, and the troubles still continuing in regard to recognition of governments as distinct from states; for example, the existing governments in Spain and China. In a book intended primarily for students, it was not to be expected that there would be full discussion of the Nuremburg and Tokio war trials and their impact upon previously held doctrines of state and individual responsibilities, but Mr. Starke does say enough to show that it is too soon to take it for granted, that the law will settle down in the way it was declared by the victorious powers and at the Nuremburg Court which they established. Mr. Starke duly notes the difference of opinion on the question whether the law applied at Nuremburg was retrospective (curious parallel with existing controversies in our domestic politics) without (if we understand him rightly) coming down on one side or the other. This is as it should be, for a generation or so of hard thinking will be needed before the world sees where it stands, upon the declaration and enforcement by the victors of rules of international law which it is held by them that the vanquished had infringed. So, again, Mr. Starke obliges his readers to face the intellectual problem of the meaning of "aggression," which remains unsolved, and also the uncomfortable fact that the United Nations have been no better able than the League of Nations to find a means of adjusting territories and rights by peaceful means, in face of objection by those adversely affected. We think this book is destined to fill an important position in the library of the serious student, and it can be confidently recommended to him by his tutor.

Rating Valuation Practice. By Philip R. Bean and Arthur Lockwood. London: Stevens & Sons, Ltd. Price 30s. net.

The first edition of this book appeared four years ago, the new edition being made necessary chiefly by the passing of the Local Government Act, 1948, as well as by intervening decisions of the Courts. Mr. H. B. Williams, K.C., in a foreword expresses the opinion that it will make a most important contribution to understanding the Act of 1948, where this affects rating practice. Close attention is given to the changes introduced by the Act in the mode of assessing house property, as well as to the method adopted for securing contributions to national finance from the nationalized trading undertakings. The authors start with a general explanation of the basis of assessment divided into paragraphs each dealing with such a topic as gross value, tenancy from year to year, and so forth; they proceed to explain the principles of liability for rates, and the present law of total and partial exemptions. The preparation of valuation lists before and after the Local Government Act, 1948, is fully dealt with, and there is an explanation covering some fifty pages of the book, of the changes made in regard to the assessment of residential property. We gather that the book is, partly at any rate, designed to meet the needs of students for the professional examinations; so far as we can judge, the present edition seems likely to be very helpful for this purpose, the more so that a new chapter on taxation has been introduced. The authors are both surveyors, and the book is designed for use by surveyors rather than by lawyers, but it is desirable for the lawyer, and especially for the legal staff of local authorities, to be acquainted with the methods followed by rating surveyors. We have not yet had an opportunity to try the book in practice, but it seems to us to contain a great deal of valuable information skilfully arranged.

Criminal Procedure, by A. M. Wilshere. London: Sweet and Maxwell, Ltd. Price 15s. net.

This volume is a reprint of Books IV and V of the well known *Harris and Wilshere's Criminal Law*, eighteenth edition, with certain necessary modifications. These modifications have been prepared by Mr. D. T. Holland, B.A., LL.B.

The whole field of criminal procedure is covered, trial on indictment, summary jurisdiction, evidence, appeals, and even more, for there are references to bastardy proceedings, and those under the Summary Jurisdiction (Separation and Maintenance) Acts including the Act of 1949. The book is therefore brought well up to date, and will be found a thoroughly suitable text-book for students who wish to concentrate on procedure.

Primitive Law. By A. S. Diamond. London: Watts & Co., Ltd. Price 15s. net.

We have from time to time reviewed works by Mr. Diamond, dealing with everyday topics of ordinary law. It is the more interesting, therefore, to come across a work of his of the size and type of *Primitive Law*. This runs to four hundred and fifty pages, obviously not enough to do more than glance at many different systems, but it glances at these in highly illuminating fashion. The learned author's first object is to disprove certain theses, which have gained common acceptance because advanced by Maine. Three middle eastern codes which have survived from pre-Jewish history are touched upon; then in Part II the author passes to consider the relation between law, morality, and religion, with special reference to Hebrew law, Indian law, and the Twelve Tables. Part III of the book is much the most substantial; here the learned author treats his topic not according to localities but according to subjects. Broadly, it may be said that the central thesis is that the religious and formalistic origins of law have been over stated by previous writers. This thesis he states with a wealth of illustrations drawn from all the primitive systems which are known to the twentieth century. Whether or not the author is ultimately held to establish his thesis, the reader will have acquired, in following the argument, an ample treasure of knowledge about the ancient world and comparative law.

Weights and Measures Handbook, Sixth Edition, Vols. I and II. Published by the Institute of Weights and Measures Administration. Price: 15s. post free.

As the publishers point out in the preface to vol. I it is ten years since the publication of the last edition of this handbook. In that period there have been changes in the duties of many of those concerned with Weights and Measures Administration.

The publication of this, the sixth edition, therefore achieves both the object of bringing the handbook up to date and also the object of meeting the increased demand.

The practice, inaugurated with the publication of the fifth edition, of issuing the handbook in two volumes, the first dealing with the legal and technical aspects and the second comprising a directory, has been continued.

The volumes, both may be described as handy pocket-sized editions, are well produced and bound in dark blue. Volume I contains comprehensive information on the various Weights and Measures (amended) Regulations, Measuring Instruments Regulations, Sale of Food (Weights and Measures Act), together with information on Appeal Cases, Forms of Recognizance, and Forms of Warrant. The appendix includes tables of error, equivalents, approved denominations permissible abbreviations and wrapper weights. The volume is well rounded off by the inclusion of a well laid out index and ruled pages for memorandum purposes.

Volume II is the directory which sets out, in convenient form, details of Inspectors of Boroughs in England, Scotland and Wales, addresses of other weights and measures authorities or officers, government departments concerned with administration of Weights and Measures Act. Also included are alphabetical lists of inspectors' names and a list of official stamp numbers.

The publishers, in selecting items for inclusion, have borne in mind the needs of their colleagues who are not always within easy reach of works of reference, and to whom indeed the handbook is a *vade mecum*.

We feel sure the present edition will maintain the reputation for indispensability and authority, which former issues have enjoyed.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 61.

FOR GOLFERS ONLY!

A gunner officer appeared at Pembroke Magistrates' Court on July 25, 1950, charged with committing wilful damage to a fence to the amount of 7*s.* contrary to s. 14 (1) of the Criminal Justice Act, 1914.

It was stated that the defendant, with a brother officer, was playing golf on Pembroke Golf Course on June 2, and during the course of the round, both players sliced at the same hole. The defendant's ball landed in a cornfield adjoining the course whilst his opponent's landed in a hedge surrounding the cornfield.

The defendant and his opponent got into the field to try to find the balls and were there seen by the owner who told the justices that he had had a lot of trouble from golfers damaging his crops. He agreed that, upon this occasion, no damage was done to the crop but complained that he had had to erect new wire and posts to the fence.

The chairman, in announcing the decision of the court to dismiss the summons on the ground that the prosecutor had not discharged the burden of proof cast upon him, urged members of the golf club and the farmer to bury the hatchet and try to work more amicably together.

COMMENT

This little case will be of interest to all golfers and, incidentally, contains quite a lot of law which it may be helpful to outline shortly. For those puzzled as to why one of two players should be singled out for prosecution it must be explained that the defendant, remembering A.C.I.'s, gave details of his number, rank, name and unit to the farmer whilst his opponent preserved an inscrutable and, some may think, diplomatic silence in response to the farmer's question.

All golfers have experienced the feeling of bitter frustration which wells up unbidden when, having pulled or sliced out of bounds, one sees the ball sitting up well on private property, from which one is separated by an impenetrable hedge or a wide and muddy ditch! The knowledge that, thanks to Mr. Bernard Darwin and his colleagues on the Rules Committee, a mitigated penalty of distance only has now to be paid although lessening one's, may one say, professional regrets, leaves one with the feeling that 3*s.* 9*d.* has been cast away unnecessarily!

The defendant displaying that initiative which one expects from a regular officer, and no doubt reflecting that any pending increase in his pay will be swiftly set off by some brilliant counter stroke on the part of the Treasury, decided to retrieve his ball, but it is permissible to doubt if he knew of the heavy penalties to which he was exposing himself.

Section 14 (1) of the Act provides that if any person wilfully or maliciously commits any damage to any real or personal property whatsoever, either of a public or private nature, such person shall be liable on summary conviction where the damage does not exceed £5, to two months' imprisonment or a fine of £5 and where the damage exceeds £5 but does not exceed £20, to three months' imprisonment or a fine of £20 and in either case to the payment of such further amount as appears to the court reasonable compensation for the damage committed, which last mentioned amount is to be paid to the party aggrieved. There is a proviso that the provision for payment of reasonable compensation is not to apply where the alleged offender acted under a fair and reasonable supposition that he had a right to do the act complained of.

It is stated in *Stone*, 1950, at p. 1804, that it seems clear that this section was not intended to give a summary remedy for an alleged trespass and the justices must inquire carefully whether actual damage was committed.

It was decided as long ago as 1827 in *Butler* v. *Turley* M. & M. 54, that it is necessary for a complainant to prove actual damage in proceedings brought under this section as damage will not be presumed in the absence of proof and nothing short of a malicious injury to property will bring the case within the jurisdiction of the justices. It is however to be noted that, provided a person wilfully commits the act complained of, he may properly be convicted under the section, even though he has no malice against the owner, *vide Gardner* v. *Mansbridge* (1887) 51 J. P. 612.

Cases of malicious damage to property of an aggravated nature are prosecuted under s. 51 of the Malicious Damage Act, 1861, which provides for much heavier penalties.

(The writer is indebted to Mr. T. P. Owen, Clerk to the Pembroke Borough Justices, for information in regard to this case.)

R.L.H.

No. 62.

OVERWORKING A YOUNG PERSON

A limited company carrying on business as millers and having its registered office in London was summoned at Swansea Magistrates' Court on July 20, 1950, first with a contravention of s. 2 of the Young Persons (Employment) Act, 1938, in that being the employer of a certain young person it failed to keep exhibited at certain premises in the form and manner prescribed by the Young Persons (Employment) Order, 1938, a notice setting forth the number of hours in the week during which the said young person might, in accordance with the provisions of Part I of the Act, be employed. The second summons alleged that the company had failed to keep, in the form and manner prescribed by the said order, a record of the hours worked and of the intervals allowed for rest and meals to the said young person, contrary to s. 2 of the Act. The third summons alleged that the defendant company had employed the said young person after one o'clock in the afternoon of every week-day in a certain week, contrary to s. 1 of the Act; the fourth summons alleged that the company had employed the young person continuously for more than five hours without an interval of not less than three-quarters of an hour for dinner between the hours of half past eleven in the morning and half past two in the afternoon, contrary to the said section and the last summons alleged that the company had employed the young person for more than the normal maximum working hours, that is to say, forty-eight working hours in a certain week, contrary to s. 1.

For the prosecution, evidence was given that a seventeen year old van boy employed by the defendant company started one week at 7.30 *a.m.* each day and finished some days at 5 *p.m.* On Friday of that week he finished at 9.30 *p.m.* and his total hours were 60¼ for the week.

On the Saturday morning the boy was half an hour late going to work as a result of which he was given seven days' notice and had to leave his employment. The proper interval had not been allowed for meals and the boy had had to have them whilst the van was moving.

For the defendant company, it was stated that sliced bread made by the company was sold during the week in question for the first time since the early days of the war and it was this fact which rendered necessary the working of excessive hours.

The company was fined upon the first summons £1 per day for each of seven days and £5 upon each of the second, third, fourth and last summonses.

COMMENT

It is perhaps permissible to doubt whether the offences outlined above would ever have come to light had not the company, not content with overworking the boy, treated him with complete lack of consideration upon the Saturday, and it is, of course, reports of cases such as this which play into the hands of those whose object is to stir up strife in the country.

The Act of 1938 contains stringent provisions designed to protect young persons from being exploited and some of the offences which may be committed under the various subsections of s. 1 are referred to in the summonses specified above. Subsection 8 of s. 1 provides that, on summary conviction, a fine of £10 may be imposed for any breach of s. 1.

"Young person" is defined in s. 9 (1) of the Act.

A child whose employment is regulated by s. 18 of the Children and Young Persons Act, 1933, is excluded from the definition but, save as aforesaid, it means a person who has not attained the age of eighteen.

R.L.H.

PENALTIES

West Bromwich—August, 1950—permitting a lorry to be used with inefficient brakes—fined £2 10*s.* The unattended lorry was seen to move off slowly after it had been parked at the side of the road, gradually to gather speed and ultimately to collide with a telegraph pole.

West Bromwich Juvenile Court—August, 1950—placing obstructions on a railway line (two defendants)—each fined £1. Two boys, aged eleven and ten, placed stones, timber, sheet metal, a steel bar, fishplates and bolts on a line which were removed by the police just before a train passed. A permanent way inspector considered the obstruction would have been sufficient to derail a train.

Frome—August, 1950—endeavouring to obtain £2 by fraud—one month's imprisonment. Defendant a man of fifty-six.

Frome—August, 1950—failing to observe a halt sign—fined £1. Defendant the secretary of a Road Safety Committee.

Deddington—August, 1950—driving a motor-van with inefficient steering gear—fined £1.

Deddington—August, 1950—permitting a motor-van with inefficient steering gear to be used—fined £5. To pay 10*s.* costs. The van was seen to swerve and it was found that there were 6½ inches free play between the steering wheel and the road wheels.

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

"BILKING"

Your issue of August 5, p. 445 on the above, is most interesting. I wonder, however, if it cannot be argued in relation to the first paragraph in the second column, that the bilker does obtain credit the moment he takes the cab, *for the minimum fare anyway*. I would have thought that proceedings on those lines might be one way out of the difficulty.

Yours faithfully,
C. P. H. McCALL,
Deputy Clerk of the County Council.

County Offices,
Preston.

[We had thought of this point when we were writing the article, but we thought that it could not be relied upon because the minimum fare becomes legally payable only when the journey for which the cab has been hired is completed (unless the "fare" alters his instructions) and if the cab breaks down or for any other reason the driver cannot fulfil the contract then we think he cannot claim any fare. Moreover, we see no real distinction between the minimum fare and the fare which has accrued at any other stage of the journey. In many cases, of course, the full fare may be one which is known both to the passenger and the driver before the journey starts.—*Ed., J. P. & L. G. R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

LANDLORD AND TENANT

I was interested to read para. 39 on p. 357 of your issue of June 24, 1950. You will appreciate that my council, as the local housing authority, are very concerned with the operation of the Furnished Houses (Rent Control) Act, 1946 and the Landlord and Tenant (Rent Control) Act, 1949. If the decision of the Judge of the Yeovil County Court in the case referred to is the better view, does it not mean that in their own interests the occupiers of all accommodation to which the Acts of 1946 and 1949 apply should immediately refer their contracts to the rent tribunal in order that, if notice to quit should subsequently be given, they could invoke the security provisions of s. 11 of the 1949 Act?

Yours faithfully,
EDWARD G. HUBBARD.

Council Offices,
Leatherhead,
Surrey.

[We confess we had not thought of this reason for preferring our own view of the law, as stated at p. 357, to that of the learned County Court Judge. It is difficult to imagine what would happen if the course suggested were ever taken, so we hope it is not necessary—*Ed., J. P. and L. G. R.*]

NOTICES

The next court of quarter sessions for the borough of Guildford will be held at the Guildhall, Guildford on October 7, 1950, at 11 *a.m.*

The next court of quarter sessions for the borough of Grantham will be held on Wednesday, October 11, 1950.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Thursday, September 14

NATIONAL SERVICE BILL, read 1a.

Friday, September 15

NATIONAL SERVICE BILL, read 2a, 3a.

THE WEEK IN PARLIAMENT

From Our Parliamentary Correspondent

While this week's emergency meeting of Parliament was concerned primarily with matters of defence, there was some discussion in the Lobbies regarding those provisions of the Legal Aid and Advice Act, 1949, which are to come into operation on October 2.

The provisions in the Act relating to legal advice and legal aid in the criminal and county courts have been deferred, but from October 2 persons whose disposable income does not exceed £420 a year and whose disposable capital does not exceed £500, will be able to obtain legal aid in proceedings in the High Court and Court of Appeal, and in the county court where a case is transferred from the High Court.

Computation of disposable income and capital will be in accordance with National Assistance Board rules, and may disregard income tax, rent, house value and certain other possessions. Free legal aid will be granted to persons with a disposable income of less than £156, but those with incomes between that figure and the upper limit will be required to make contributions.

The scheme will be administered by area and local committees, and panels of solicitors and barristers are now being formed. The committee will issue certificates to applicants with a reasonable cause of action to enable them to choose a solicitor or barrister.

MAINTENANCE ORDERS

Although questions were not permitted orally this week, Lt.-Col. M. Lipton (Brixton) submitted a question to the Secretary of State for the Home Department asking the numbers of men sent to prison each year since 1939 for non-compliance with maintenance orders.

The Secretary of State for the Home Department, Mr. Chuter Ede, in a written answer, stated that the number of men received into prison in England and Wales for non-compliance with wife-maintenance orders from 1939 to 1949 was as follows:

1939, 1,958; 1940, 1,517; 1941, 1,412; 1942, 1,597; 1943, 1,788; 1944, 1,819; 1945, 2,182; 1946, 2,354; 1947, 2,945; 1948, 3,450; 1949, 3,365.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children—*Contribution Order, Children Act, 1948, s. 23—Child no longer in care of local authority—Can contribution order now be made?*

In 1949 the children of X were received into the care of the local authority under s. 1 of the Children Act, 1948, for a period which has now expired. No application to a court of summary jurisdiction under s. 23 of the Children Act, 1948, or s. 87 of the Children and Young Persons Act, 1933, for a contribution order against X was made, nor did X sign any enforceable agreement to contribute towards the expenses of maintaining his children. In these circumstances I shall be glad to have your opinion :—

(*a*) as to whether it is open at this stage to a court of summary jurisdiction to make a retrospective order relative to the period of maintenance and, if not,

(*b*) whether you agree that the local authority now have no means of obtaining any contribution.

J. "LOCO PARENTIS."

Answer.

(*a*) No.

(*b*) We are not aware of any.

2.—Criminal law—*Provision of footwear and clothing under Education (Miscellaneous Provisions) Act, 1948—False statement by parent.*

My council operate the provisions of s. 5 of the above quoted Act which empowers a local education authority to provide such clothing as is deemed to be necessary for the purpose of ensuring that children are sufficiently and suitably clad so as to attend school. Subsection (6) gives the local education authority power to recover from the parent, in respect of any such clothing supplied, such sum, if any, as in the opinion of the authority the parent can pay without financial hardship. When a needy case comes to the notice of the education officer the parents are immediately, and before the issue of any clothing, requested to complete a questionnaire, giving particulars of the home conditions and income on which any charge to the parent can be based. I have before me a case where the information given by the parent on this form is incorrect, in that it did not disclose the earned income of the mother, and I have been asked to advise what action, if any, should be taken against the parent. My first reaction was that the parent had been guilty of an offence in obtaining goods by false pretences under s. 32 (1) of the Larceny Act, 1916, but, on a close reading of the Education Act, 1948, I do not consider this view is correct. As I read the 1948 Act, the local education authority can provide clothing solely because a child is not sufficiently clad, and without reference to the income of the parent; the financial position of the parent being a matter for subsequent consideration, only when consideration is given to the question as to who shall bear the cost of any clothing supplied. If this is correct, then there appears to be no offence of obtaining goods by false pretences, as it could not be shown that the goods were parted with by reason of the false pretences: *R.* v. *Dale* (1836) 7 C & P. 353, and if the question was put to the prosecutor "why did you part with your property": *R.* v. *Grail* (1944) 30 Cr. App. R. 81, the answer must be because the child had insufficient clothing—and not because of the false statement of the parents' income. I may explain that the inaccuracy of the form was discovered after the issue of the clothing, and that the parents are being asked to pay the cost thereof. I am not at all clear as to what offence, if any, the parent has committed. As I see it, all the parents have done is to endeavour to avoid payment of a sum of money by falsely representing their income, but I do not know any statutory provision which makes this an offence, and it would not appear to be an attempt to obtain money by false pretences inasmuch as there was no attempt to make the local education authority part with their money, but merely an effort to preclude them from recovering what was justly due to them; it may be that this could be construed as a "constructive" parting but I am not happy on the point.

I should, therefore, be grateful if you could let me have your considered opinion on the legal position arising out of the circumstances outlined above, and particularly :—

(*a*) Whether I am correct in believing there can be no charge against the parents for obtaining goods by false pretences;

(*b*) If so, what offence, if any, the parents have committed.

JUM.

Answer.

The local education authority are by s. 5 (6) under obligation in certain circumstances to require the parent to pay such sum, if any, as he is able in their opinion to pay without financial hardship. But we do not find that he is anywhere required to assist the forming of their opinion by giving information: if he chooses to ignore the questionnaire it seems that they must form an opinion as best they can. On this view, the questionnaire is not within s. 5 (*b*) of the Perjury Act, 1911, as it would be if the parent had been authorized or required by the Act of 1948 to make it. As regards other possible forms of criminal proceeding we agree with the reasoning in the query: we do not consider that there can be a "constructive" and *ex post facto* parting with property.

The answers to the questions are, therefore,

(*a*) Yes.

(*b*) None.

3.—Elections—*Vehicles—Local government elections.*

Do ss. 88 and 89 of the Representation of the People Act, 1949, apply in part or wholly to municipal as well as parliamentary elections? It seems fairly clear that part of s. 88 at any rate is for parliamentary elections only, but does the whole section apply only to those elections? Section 89 speaks of "at an election"—does that mean both types, that is, parliamentary and municipal?

A.H.S.K.

Answer.

Section 88 of the Representation of the People Act, 1949, is by its terms restricted to parliamentary elections. But the word "parliamentary" does not occur in s. 89, which therefore, by virtue of the definition in s. 171, covers also local government elections.

4.—Husband and Wife—*Order made in absence of husband—His non-attendance due to genuine mistake—Can case be re-opened?*

My justices made a separation order against a husband in his absence. They believed, on reasonable grounds, that he knew of the date of the hearing and that his failure to appear was deliberate. It later transpired that his non-attendance was due to a genuine mistake on his part. He has now requested a re-hearing and states that he intended to defend his wife's allegations of persistent cruelty.

In a case in the divisional court reported in *The Times* of May 5, 1950, the court ordered a re-hearing in circumstances similar to those mentioned above.

Advice is sought on the following points :—

1. Would the justices be in order in acceding to this husband's request so as to avoid the expense involved in an appeal?

2. If so, would there have to be a prior application by the husband for the revocation of the existing separation order?

JASE.

Answer.

We refer our correspondent to our answer to a similar question to P.P. 3 at p. 55, *ante*.

We think that a summons under s. 30 (3) of the Criminal Justice Administration Act, 1914, can be issued to show cause why the order should not be discharged, and both parties could then be heard.

5.—Landlord and Tenant—*Rent Restrictions Acts—Reduction by landlord of size of tenement.*

The landlord of four houses desires to take away a part of each garden for the purpose of extending his factory. This would still leave a fair amount of garden, which might be termed reasonable, in the occupation of the tenants. The houses are subject to the Rent Restrictions Acts. The tenants object to the proposal. Can the landlord get possession of the land he requires, and if so what procedure must he follow?

APRO.

Answer.

But for the Rent Restrictions Acts, the landlord would be able, on termination of the tenancy by effluxion of time or by notice, to confront the tenant with the choice, either of going elsewhere or of accepting a new tenancy with a smaller garden. Section 15 (3) of the Act of 1920 entitles a tenant, who holds over or who remains after a notice to quit, to retain all the terms and conditions of the original contract. If therefore the original contract was, expresly or impliedly, for letting the house with the garden as then existing, the landlord cannot reduce the garden against the tenant's wishes.

6.—Larceny—*Coins in meter—Removal by wife of householder.*

Would you please advise whether in your opinion the wife of a householder can be convicted of the larceny of coins from gas and electricity prepayment meters installed in the house of which the husband is householder? The meters are the property of the appropriate gas and electricity boards, and they are normally kept locked and are

emptied at regular intervals by meter collectors. In the particular case under consideration the wife on her own admission was responsible for forcing the meter locks and abstracting the coins. The argument against the possibility of a conviction appears to be that the money in the meter containers is the property, and remains in the possession, of the householder until collected and, as the wife cannot commit larceny in the normal way of her husband's property, she cannot be guilty of the larceny of the coins. In the case of the gas supply there is no form of agreement, but there is a form of application with conditions attached in the case of the electricity supply whereby the consumer undertakes to pay the normal rates for the electricity supplied. A copy of this form is enclosed for your information. The signature on the form is that of a previous householder.

A. PENIT.

Answer.

The electricity agreement does not expressly say who owns the meter, but this omission, and the absence of a written agreement for the gas, are immaterial. The normal arrangement is for a meter belonging to the undertaker to be placed in the premises with the owner's consent; nobody pretends that it belongs to the tenant. For purposes of the Larceny Act, 1861, we do not think that anything hangs on its being a gas or electricity meter: it could equally be an automatic sweet or cigarette machine—or, indeed, but for the fact that a commodity is supplied automatically as soon as a coin is placed in the box, it could be a simple box. The essence of the position is that A agrees to put a box in B's premises, and to perform a service for B or C upon B's or C's putting a coin in the box. The box is A's property, and in our opinion the coin is A's property also as soon as placed in the box; it can be argued that, inasmuch as the box is locked and A holds the key, A has possession of the coin as well as property. Alternatively, if the coin is still in B's possession, or C's, until collected by A, this is no more than possession by a bailee. Upon either view, the coins are larcenable by B or C, equally as by a stranger, and therefore by C's wife.

7.—**Magistrates**—*Right to claim trial by jury* (*s.* 17, *Summary Jurisdiction Act*, 1879)—*Right arising because of greater penalty for a second or subsequent offence—What is correct procedure?*

Section 17 of the Summary Jurisdiction Act, 1879, provides, *inter alia*, that where a person is charged with an offence punishable with more than three months' imprisonment, he has the right of trial by jury.

The point in question concerns those offences which do not come within the provisions of that section except when there has been a previous conviction for a similar offence, *e.g.*, s. 1 of the Night Poaching Act, 1828, which carries a punishment of three months' imprisonment for the first offence and six months for a second. It is clearly stated that where a person appears before a court charged with such an offence he may, "before he pleads to the charge," claim to be tried by jury and I should like to know the procedure by which the court is informed of the previous conviction in order that the defendant may have the benefit of such a trial. It does seem rather invidious to disclose a person's previous convictions before he has pleaded to the charge, but there does not appear to be any alternative.

Would you please favour me with your opinion on this point.

JURL

Answer.

We do not think that the previous conviction should be disclosed by the prosecution to the court before the case begins, and we know of no wholly satisfactory answer to the problem.

It is sometimes dealt with by the court telling the defendant that in certain circumstances he has the right on the charge in question to claim trial by jury and asking him whether, if he has such a right, he wishes to exercise it.

R. v. *Beesby and Others* (1909) 73 J.P. 234 makes it clear that justices cannot ignore the previous conviction once it is made known to them. If this happens in the course of the trial the defendant must then be informed of his right and the proceedings must start afresh.

8.—**Public Health Act, 1936**—*Materials specified under s.* 53 (7)—*Building existing before* 1936.

The above enactment gives a local authority power, *inter alia*, to require certain buildings for which plans under building byelaws should have been deposited but were not deposited, to be removed after the expiration of a prescribed period. Can the interpretation of the section be deemed to include byelaws made not only under s. 61 of the Public Health Act, 1936, but also those in pursuance of earlier public health statutes? If this is so, is my contention correct that proceedings for contravention of these earlier byelaws can be taken as would be the case had the byelaws under the 1936 Act been then operative?

A.W.S.

Answer.

What do you mean by "proceedings for contravention of (the earlier) byelaws"? Section 53 (2) draws a distinction, between proceedings for contravention and action under the subsection. If the building is one in respect of which plans ought to have been deposited under the earlier byelaws (and this should be carefully verified, for many districts had no byelaws before the Act of 1936, and where byelaws existed they often did not apply to many buildings), and if its materials are in fact materials to which s. 53 applies by reason of subs. (7), then we think action under subs. (2) can be taken as a matter of law. Even so, however, such action may be unwise. The building will in every case have now stood for a dozen years; legislation would be retrospectively applied, and upon appeal under s. 53 (4) we should expect any common-sensible bench to incline against agreeing that the materials were liable to rapid deterioration or otherwise unsuitable for permanent buildings.

9.—**Rating and Valuation**—*House left empty for repairs.*

An owner enters into an agreement under s. 11 (2) (*a*) of the Rating and Valuation Act, 1925. The council allot one of his tenants a council house, and request the owner not to re-let the house he vacates until reported on by the medical officer of health. Subsequently a notice relating to the making of a demolition order is served. The owner submits a tender for repairs and the council accepts the owner's undertaking to carry them out. The work is at once put in hand. On completion the owner asks for rate allowance for void period. The council refuse on the ground that the terms of the agreement are that rates shall be paid whether the property is occupied or not. In the exceptional circumstances are the council justified?

ALOP.

Answer.

Our difficulty about answering this question is that we are not told what was the "notice relating to the making of a demolition order" which was served. It looks, however, as if the stage was never reached at which occupation was an offence under s. 14 of the Housing Act, 1936. Whatever the compounding position when an owner cannot lawfully put a tenant into the house, we do not, on the facts before us, which seem to be that the owner was voluntarily (though doubtless properly) refraining from letting, consider that the position was different from that during any other period of not letting.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

CITY OF OXFORD

Assistant Solicitor

APPLICATIONS are invited for the permanent post of Assistant Solicitor on Grade VIII of the National Scales of Salaries (£685 x £25—£760).

Applications, on forms obtainable from me, must be delivered to me by October 21, 1950.

Canvassing of members of the Oxford City Council either directly or indirectly in connection with this appointment will disqualify the candidates.

HARRY PLOWMAN,
Town Clerk.

Town Hall, Oxford.

CITY OF MANCHESTER

Appointment of Full-time Woman Probation Officer

APPLICATIONS are invited for this appointment.

Applicants must not be less than 23 or more than 40 years of age, except in the case of a serving full-time probation officer.

The appointment will be subject to the Probation Rules, 1949, and the salary will be in accordance with such rules and subject to superannuation deductions.

The successful candidate may be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of two recent testimonials, must reach the undersigned not later than Thursday, October 5, 1950.

WALTER LYON,
Secretary to the Probation Committee.

City Magistrates' Court,
Manchester 1.

BOROUGH OF EPSOM AND EWELL

Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor in the Town Clerk's Department at a salary in accordance with Grade A.P.T. VII of the National Scales (£635—£710 p.a.) plus London area weighting (£30 p.a.).

Candidates must have had previous experience of conveyancing and advocacy, and local government experience will be an advantage.

The successful candidate will not be permitted to engage in private practice, and the appointment will be subject to the National Conditions of Service; one month's notice on either side; the provisions of the Local Government Superannuation Act, 1937; and to the successful candidate passing a medical examination.

Canvassing in any form will be a disqualification, and candidates must disclose in their application whether to their knowledge they are related to any member of the Council or to a holder of any senior office under the Council.

Applications, stating age, present and previous appointments, qualifications and experience, together with the names of two referees, must be sent to the undersigned so as to reach him not later than October 7, 1950.

EDWARD MOORE,
Town Clerk.

Town Hall, The Parade, Epsom.
September 22, 1950.

INQUIRIES

DIVORCE—DETECTIVE AGENCY. T. E. HOYLAND, Ex-Detective Sergeant, Member of B.D.A. and F.B.D. Observations; confidential inquiries and Process serving anywhere. Agents in all parts of the country. Own car.—1, Mayo Road, Bradford. Tel.: 26823, day or night.

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